

5-3-2011

## Cuevas v. Barraza Clerk's Record v. 1 Dckt. 38493

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

### Recommended Citation

"Cuevas v. Barraza Clerk's Record v. 1 Dckt. 38493" (2011). *Idaho Supreme Court Records & Briefs*. 2902.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2902](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2902)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAW CLERK

Vol. 1 of 5

(VOLUME I)

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

---

**WILFRIDO CUEVAS, an individual,**

**Plaintiff-Counderdefendant-  
Respondent,**

**-vs-**

**BERNARDINO BARRAZA, an individual  
and spouse (if any),**

**Defendant-Counterclaimant-  
Appellant,  
and**

**LIOBALDO GARZA, an individual and  
spouse (if any); DOES I THROUGH X,  
UNKNOWN CLAIMANTS TO THE REAL  
PROPERTY DESCRIBED IN EXHIBIT "A",  
COMMONLY KNOWN AS 29452 PEARL  
ROAD, PARMA, IDAHO,**

**Defendants.**

---

Appealed from the District of the Third Judicial District  
for the State of Idaho, in and for Canyon County

Honorable GREGORY M. CULET, District Judge

---

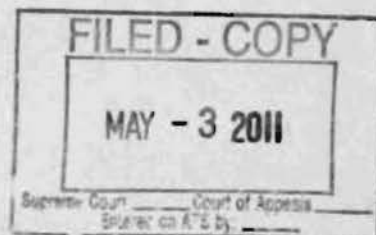
Robert Ward  
HALL FRIEDLY & WARD

Attorney for Appellant

Rebecca A. Rainey  
REBECCA A. RAINEY, PA.

---

Attorney for Respondent



38493

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,	)	
	)	
Plaintiff-Counterdefendant-	)	
Respondent,	)	
	)	Supreme Court No. 38493
-vs-	)	
	)	
BERNARDINO BARRAZA, an individual	)	
and spouse (if any),	)	
	)	
Defendant-Counterclaimant-	)	
Appellant,	)	
And	)	
	)	
LIOBALDO GARZA, an individual and	)	
spouse (if any); DOES I THROUGH X,	)	
UNKNOWN CLAIMANTS TO THE REAL	)	
PROPERTY DESCRIBED IN EXHIBIT "A",	)	
COMMONLY KNOWN AS 29452 PEARL	)	
ROAD, PARMA, IDAHO,	)	
	)	
Defendants.	)	

Appeal from the Third Judicial District, Canyon County, Idaho

HONORABLE GREGORY M. CULET, Presiding

Robert Ward, HALL FRIEDLY & WARD

Attorney for Appellant

Rebecca A. Rainey, REBECCA A. RAINEY, PA.

Attorney for Respondent

## TABLE OF CONTENTS

	Page No.	Vol. No.
Register of Actions	1 – 4	I
Complaint to Quiet Title, filed 8-7-09	5 – 10	I
Answer, filed 8-28-09	11 – 15	I
Affidavit of Rebecca A. Rainey in Support of Plaintiff's Motion for Summary Judgment, filed 9-21-09	16 – 38	I
Affidavit of Wilfrido Cuevas in Support of Plaintiff's Motion for Summary Judgment, filed 9-21-09	39 – 86	I
Memorandum in Support of Plaintiff's Motion for Summary Judgment, filed 9-21-09	87 – 149	I
Plaintiff's Motion for Summary Judgment, filed 9-22-09	150 – 152	I
Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment, filed 10-21-09	153 – 166	I
Objection and Motion to Strike, filed 10-21-09	167 – 169	I
Affidavit of Bernardino Barraza, filed 10-21-09	170 – 234	II
Plaintiff's Opposition to Defendant Barraza's Objection and Motion to Strike, filed 10-27-09	235 – 237	II
Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment, filed 10-27-09	238 – 249	II
Order Granting Plaintiff's Motion for Summary Judgment, filed 11-10-09	250 – 252	II
Motion to Reconsider and/or to Clarify Order Granting Plaintiff's Motion for Summary Judgment, filed 11-20-09	253 – 255	II
Amended Answer and Counterclaim, filed 12-18-09	256 – 262	II
Answer to Defendant Bernardino Barraza's Counterclaim, filed 1-8-10	263 – 268	II

## TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Wilfrido Cuevas' Memorandum in Opposition to Bernardino Barraza's Motion to Reconsider and/or Clarify Order, filed 1-21-10	269 – 272	II
Court Minutes-Motion Hearing, held 1-28-10	273 – 274	II
Wilfrido Cuevas' Second Motion for Summary Judgment, filed 8-31-10	275 – 277	II
Affidavit of Rebecca A. Rainey in Support of Wilfrido Cuevas' Second Motion for Summary Judgment, filed 8-31-10	278 – 321	II
Memorandum in Support of Wilfrido Cuevas' Second Motion for Summary Judgment, filed 8-31-10	322 – 337	II
Answering Brief in Opposition to Plaintiff's Second Motion for Summary Judgment, filed 9-15-10	338 – 349	II
Affidavit of Robert Ward in Support of Defendant's Answering Brief in Opposition to Plaintiff's Second Motion for Summary Judgment, filed 9-15-10	350 – 436	III
Objection and Motion to Strike, filed 9-16-10	437 – 439	III
Plaintiffs' Opposition to Defendant Barraza's Objection and Motion to Strike, filed 9-23-10	440 – 442	III
Reply Memorandum in Support of Wilfrido Cuevas' Second Motion for Summary Judgment, filed 9-23-10	443 – 452	III
Supplemental Memorandum Opposing Plaintiff's Second Motion for Summary Judgment, filed 11-3-10	453 – 457	III
Plaintiff's Response to Supplemental Memorandum Opposing Plaintiff's Second Motion for Summary Judgment, filed 11-9-10	458 – 471	III
Motion to Reconsider Order Granting Plaintiff's Motion for Summary Judgment, filed 11-12-10	472 – 474	III

## TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Memorandum in Support of Motion to Reconsider Order Granting Plaintiff's First Motion for Summary Judgment, filed 11-12-10	475 – 487	III
Opposition to Motion to Reconsider Order Granting Plaintiff's First Motion for Summary Judgment, filed 11-24-10	488 – 498	III
Reply to Plaintiff's Opposition to Motion to Reconsider Order Granting Plaintiff's First Motion for Summary Judgment, filed 12-1-10	499 – 502	III
Order on Supplemental Argument Re Summary Judgment and Motion for Reconsideration, filed 12-15-10	503 – 508	III
Order Granting Wilfrido Cuevas' Second Motion for Summary Judgment, filed 12-16-10	509 – 511	III
Judgment, filed 12-23-10	512 – 515	III
Notice of Appeal, filed 1-27-11	516 – 521	III
Plaintiff/Respondent's Request for Additional Transcripts, filed 2-10-11	522 – 524	III
Certificate of Exhibit	525	III
Certificate of Clerk	526	III
Certificate of Service	527	III

## INDEX

	Page No.	Vol. No.
Affidavit of Bernardino Barraza, filed 10-21-09	170 – 234	II
Affidavit of Rebecca A. Rainey in Support of Plaintiff's Motion for Summary Judgment, filed 9-21-09	16 – 38	I
Affidavit of Rebecca A. Rainey in Support of Wilfrido Cuevas' Second Motion for Summary Judgment, filed 8-31-10	278 – 321	II
Affidavit of Robert Ward in Support of Defendant's Answering Brief in Opposition to Plaintiff's Second Motion for Summary Judgment, filed 9-15-10	350 – 436	III
Affidavit of Wilfrido Cuevas in Support of Plaintiff's Motion for Summary Judgment, filed 9-21-09	39 – 86	I
Amended Answer and Counterclaim, filed 12-18-09	256 – 262	II
Answer to Defendant Bernardino Barraza's Counterclaim, filed 1-8-10	263 – 268	II
Answer, filed 8-28-09	11 – 15	I
Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment, filed 10-21-09	153 – 166	I
Answering Brief in Opposition to Plaintiff's Second Motion for Summary Judgment, filed 9-15-10	338 – 349	II
Certificate of Clerk	526	III
Certificate of Exhibit	525	III
Certificate of Service	527	III
Complaint to Quiet Title, filed 8-7-09	5 – 10	I
Court Minutes-Motion Hearing, held 1-28-10	273 – 274	II

## INDEX, Continued

	Page No.	Vol. No.
Judgment, filed 12-23-10	512 – 515	III
Memorandum in Support of Motion to Reconsider Order Granting Plaintiff's First Motion for Summary Judgment, filed 11-12-10	475 – 487	III
Memorandum in Support of Plaintiff's Motion for Summary Judgment, filed 9-21-09	87 – 149	I
Memorandum in Support of Wilfrido Cuevas' Second Motion for Summary Judgment, filed 8-31-10	322 – 337	II
Motion to Reconsider and/or to Clarify Order Granting Plaintiff's Motion for Summary Judgment, filed 11-20-09	253 – 255	II
Motion to Reconsider Order Granting Plaintiff's Motion for Summary Judgment, filed 11-12-10	472 – 474	III
Notice of Appeal, filed 1-27-11	516 – 521	III
Objection and Motion to Strike, filed 10-21-09	167 – 169	I
Objection and Motion to Strike, filed 9-16-10	437 – 439	III
Opposition to Motion to Reconsider Order Granting Plaintiff's First Motion for Summary Judgment, filed 11-24-10	488 – 498	III
Order Granting Plaintiff's Motion for Summary Judgment, filed 11-10-09	250 – 252	II
Order Granting Wilfrido Cuevas' Second Motion for Summary Judgment, filed 12-16-10	509 – 511	III
Order on Supplemental Argument Re Summary Judgment and Motion for Reconsideration, filed 12-15-10	503 – 508	III
Plaintiff/Respondent's Request for Additional Transcripts, filed 2-10-11	522 – 524	III
Plaintiff's Motion for Summary Judgment, filed 9-22-09	150 – 152	I



# INDEX, Continued

	Page No.	Vol. No.
Plaintiff's Opposition to Defendant Barraza's Objection and Motion to Strike, filed 10-27-09	235 – 237	II
Plaintiff's Response to Supplemental Memorandum Opposing Plaintiff's Second Motion for Summary Judgment, filed 11-9-10	458 – 471	III
Plaintiffs' Opposition to Defendant Barraza's Objection and Motion to Strike, filed 9-23-10	440 – 442	III
Register of Actions	1 – 4	I
Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment, filed 10-27-09	238 – 249	II
Reply Memorandum in Support of Wilfrido Cuevas' Second Motion for Summary Judgment, filed 9-23-10	443 – 452	III
Reply to Plaintiff's Opposition to Motion to Reconsider Order Granting Plaintiff's First Motion for Summary Judgment, filed 12-1-10	499 – 502	III
Supplemental Memorandum Opposing Plaintiff's Second Motion for Summary Judgment, filed 11-3-10	453 – 457	III
Wilfrido Cuevas' Memorandum in Opposition to Bernardino Barraza's Motion to Reconsider and/or Clarify Order, filed 1-21-10	269 – 272	II
Wilfrido Cuevas' Second Motion for Summary Judgment, filed 8-31-10	275 – 277	II

## Other Claims

Date		Judge
8/7/2009	New Case Filed-Other Claims	Gregory M Culet
	Summons Issued (2)	Gregory M Culet
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Rainey, Rebecca (attorney for Cuevas, Wilfrido Duran) Receipt number: 0408896 Dated: 8/7/2009 Amount: \$88.00 (Check) For: Cuevas, Wilfrido Duran (plaintiff)	Gregory M Culet
8/11/2009	Amended Summons Issued	Gregory M Culet
8/21/2009	Affidavit Of Service 8-16-09 (Bernardino)	Gregory M Culet
	Affidavit Of Service (8-12-09 Liobaldo)	Gregory M Culet
8/28/2009	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Ward, Robert Receipt number: 0413144 Dated: 8/28/2009 Amount: \$58.00 (Check) For: Barraza, Bernardino Flores Jr (defendant)	Gregory M Culet
	Answer-Bernardino Barraza	Gregory M Culet
9/4/2009	Lis Pendens	Gregory M Culet
9/21/2009	Memorandum in Suppt of Plnt's Motn for Summary Jdmt	Gregory M Culet
	Affidavit of Rebecca A Rainey in Suppt of Plnt's Motn for Summary Jdmt	Gregory M Culet
	Affidavit of Wilfrido Cuv as in suppt of Plnt's Motn for Summary Jdmt	Gregory M Culet
9/22/2009	Plaintiff's Motion for Summary Judgment (fax)	Gregory M Culet
	Notice Of Hearing Re: Plaintiff's Motion for Summary Judgment 11-3-09 (fax)	Gregory M Culet
	Hearing Scheduled (Motion Hearing 11/03/2009 09:00 AM) plts motn for summ judg	Gregory M Culet
10/21/2009	Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment	Gregory M Culet
	Affidavit of Bernardino Barraza	Gregory M Culet
	Objection and Motion to Strike	Gregory M Culet
10/27/2009	Plaintiff's Opposition to Defendant's Barraza's Objection and Motion to Strike	Gregory M Culet
	Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment	Gregory M Culet
11/3/2009	Hearing result for Motion Hearing held on 11/03/2009 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100 pages plts motn for summ judg	Gregory M Culet
	Hearing result for Motion Hearing held on 11/03/2009 09:00 AM: Hearing Held plts motn for summ judg	Gregory M Culet
	Hearing result for Motion Hearing held on 11/03/2009 09:00 AM: Motion Denied - Motion to Strike	Gregory M Culet
11/10/2009	Order Granting Plt Motion for Summary Judgment	Gregory M Culet
11/20/2009	Hearing Scheduled (Conference - Telephone 01/28/2010 11:00 AM) def's motion reconsider	Gregory M Culet
	Amended Notice of Hearing 01/28/2010 (fax)	Gregory M Culet
	Notice Of Hearing	Gregory M Culet

000001

## ROA Report

Case: CV-2009-0008175-C Current Judge: Gregory M Culet

Wilfrido Duran Cuevas vs. Bernardino Flores Barraza Jr, etal.

Wilfrido Duran Cuevas vs. Bernardino Flores Barraza Jr, Liobaldo Garza

## Other Claims

Date		Judge
11/20/2009	Motion to reconsider and claify order granting pltf's motion for sumamry judgment (fax)	Gregory M Culet
12/3/2009	Motion for leave to file amended answer and counterclaim	Gregory M Culet
	Notice Of Hearing 01/28/2010	Gregory M Culet
12/7/2009	Mediation Order - Linda Copple-Trout	Gregory M Culet
12/16/2009	Stipulation for leave to file amended answer and counterclaim	Gregory M Culet
12/18/2009	Order for Leave to File Amended Answer & Counterclaim	Gregory M Culet
	Amended Answer & Counterclaim	Gregory M Culet
1/8/2010	answer to def barraza's counterclaim (fax)	Gregory M Culet
1/21/2010	Wilfrido cuevas Memorandum in opposition to barraza's motion to reconsider and/or clarify (fax)	Gregory M Culet
1/28/2010	Hearing result for Conference - Telephone held on 01/28/2010 11:00 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages def's motion reconsider/ defs motn amend answer/counterclaim	Gregory M Culet
	Hearing result for Conference - Telephone held on 01/28/2010 11:00 AM: Hearing Held def's motion reconsider/ defs motn amend answer/counterclaim	Gregory M Culet
	Hearing result for Conference - Telephone held on 01/28/2010 11:00 AM: Motion Denied def's motion reconsider/ defs motn amend answer/counterclaim	Gregory M Culet
4/29/2010	Plaintiff/Counterdefendant's Request For Trial Setting	Gregory M Culet
5/14/2010	Notice Of Service (fax)	Gregory M Culet
5/26/2010	Response to Request for Trial Setting	Gregory M Culet
3/11/2010	Order Setting Case for Trial and Pretrial	Gregory M Culet
	Hearing Scheduled (Court Trial 12/07/2010 09:30 AM) 2 Day	Gregory M Culet
	Hearing Scheduled (Pre Trial 10/12/2010 08:30 AM) Pretrial Conference	Gregory M Culet
7/9/2010	Stipulation re scheduling deadlines (fax)	Gregory M Culet
7/29/2010	Notice Of Service	Gregory M Culet
	Notice Of Service	Gregory M Culet
3/31/2010	Notice Of Service of Plaintiff's Answers and Responses to Defendant Bernardino Barraza's Requests for Admission, First Set of Interrogatires, and Requests for Production of Documents	Gregory M Culet
	Memorandum in support of Wilfredo Cuevas Second Mo for Summary Judgment	Gregory M Culet
	Wilfredo Cuevas Second Motion for Summary Judgment	Gregory M Culet
	Affidavit of Rebecca A Rainey in support of Wilfredo Cuevas Second Motion for Summary Judgment	Gregory M Culet
	Notice Of Hearing RE: Wilfrido Cuevas Second Motion for Sum Judgment 9-30-10	Gregory M Culet
	Hearing Scheduled (Motion Hearing 09/30/2010 09:00 AM) Sum Judgment	Gregory M Culet

000002

## Other Claims

Date		Judge
9/15/2010	Answering Brief in Opposition to Plaintiff's Second Motion for Summary Judgment	Gregory M Culet
	Affidavit of Robert Ward in Support of Defendant's Answering brief in opposition to plaintiffs second motion for summary judgment	Gregory M Culet
9/16/2010	Objection and Motion to Strike	Gregory M Culet
9/22/2010	Notice of Available and Unavailable Dates for Hearing (fax)	Gregory M Culet
9/23/2010	Hearing Scheduled (Pre Trial 10/14/2010 01:30 PM) Pretrial Conference	Gregory M Culet
	Hearing Scheduled (Motion Hearing 10/14/2010 01:30 PM) Summary Judgment	Gregory M Culet
	Plaintiff's Opposition to defendant barrazas objection and motion to strike (fax)	Gregory M Culet
	Reply Memorandum in support of wilfrido cuevas second motion for summary judgment (fax)	Gregory M Culet
	Amended Notice of Hearing 10-14-10	Gregory M Culet
9/29/2010	Notice Of Service	Gregory M Culet
10/13/2010	statement of theory, witness and exhibit list and written statement	Gregory M Culet
10/14/2010	Hearing result for Court Trial held on 12/07/2010 09:30 AM: Hearing Vacated 2 Day	Gregory M Culet
	Hearing result for Pre Trial held on 10/14/2010 01:30 PM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Pre Trial held on 10/14/2010 01:30 PM: Motion Held Pretrial Conference & Motion for Summary Judgment	Gregory M Culet
	Hearing result for Pre Trial held on 10/14/2010 01:30 PM: Motion Granted-Motion for Summary Judgment	Gregory M Culet
10/19/2010	Application for entry of default	Gregory M Culet
	Affidavit of Rebecca A Rainey in support of application for entry of default	Gregory M Culet
10/25/2010	Entry of Default and Order	Gregory M Culet
11/3/2010	Supplemental Memorandum Opposing Plaintiff's Second Motion for Summary Judgment	Gregory M Culet
11/9/2010	Plaintiff's response to supplemental memorandum opposing second motion for summary judgment (fax)	Gregory M Culet
11/12/2010	Motion to reconsider order granting motion for summary judgment	Gregory M Culet
	Memorandum in support of motion to reconsider	Gregory M Culet
11/18/2010	Notice Of Hearing 12-2-10	Gregory M Culet
	Hearing Scheduled (Motion Hearing 12/02/2010 09:00 AM) Bernardino Barrazas motion to reconsider	Gregory M Culet
11/22/2010	Directive	Gregory M Culet
11/24/2010	Opposition to Motion to Reconsider Order Granting Plaintiffs First Motion for Summary Judgment (fax)	Gregory M Culet
12/1/2010	Reply to Plaintiff's opposition to Motion to reconsider order granting Plaintiff's First motion for summary judgment	Gregory M Culet

000003

## Other Claims

Date		Judge
12/2/2010	Hearing result for Motion Hearing held on 12/02/2010 09:00 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing held on 12/02/2010 09:00 AM: Motion Held Bernardino Barrazas motn to reconsider	Gregory M Culet
12/15/2010	Hearing Scheduled (Conference - Telephone 12/20/2010 08:30 AM)	Gregory M Culet
	Order on Suppleental Argument RE Aummary Judgment and Motion for Reconsideration	Gregory M Culet
12/16/2010	Hearing result for Conference - Telephone held on 12/20/2010 08:30 AM: Hearing Vacated	Gregory M Culet
	Order granting Wilfrido Cuevas' Second Motion for Summary Judgment	Gregory M Culet
12/23/2010	Judgment	Gregory M Culet
	Civil Disposition entered for: Barraza, Bernardino Flores Jr, Defendant; Garza, Liobaldo, Defendant; Cuevas, Wilfrido Duran, Plaintiff. Filing date: 12/23/2010	Gregory M Culet
	Case Status Changed: Closed	Gregory M Culet
1/5/2011	Plaintiff's Memorandum of Costs (fax)	Gregory M Culet
	Affidavit of Mark C peterson in Support of Plaintiff's Memorandum of Costs (fax)	Gregory M Culet
1/19/2011	Objection to Pltf's Memorandum of Costs (fax)	Gregory M Culet
1/27/2011	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Ward, Robert (attorney for Barraza, Bernardino Flores Jr) Receipt number: 0085763 Dated: 1/27/2011 Amount: \$101.00 (Check) For: Barraza, Bernardino Flores Jr (defendant)	Gregory M Culet
	Bond Posted - Cash (Receipt 85765 Dated 1/27/2011 for 100.00) for clerks record	Gregory M Culet
	Case Status Changed: Closed pending clerk action	Gregory M Culet
	Notice of Appeal	Gregory M Culet
	Appealed To The Supreme Court	Gregory M Culet
2/10/2011	Plaintiff/Respondents Request for Additional Transcripts	Gregory M Culet
	Notice of Change of Firm and Address	Gregory M Culet

C.ub.

**F I L E D**  
A.M. 150 P.M.

**AUG 07 2009**

**CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY**

Mark C. Peterson, ISB No. 6477  
Rebecca A. Rainey, ISB No. 7525  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 South Capitol Boulevard, 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
rar@moffatt.com  
24163.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any); LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED IN  
EXHIBIT "A", COMMONLY KNOWN AS  
29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

**COMPLAINT TO QUIET TITLE**

COMES NOW Wilfrido Cuevas ("Plaintiff"), and for a cause of action against  
defendants Bernardino Barraza and spouse (if any) and Liobaldo Garza and spouse (if any) and

all unknown claimants to the real property commonly known as 29452 Pearl Road, Parma, Idaho (collectively, "Defendants"), and complains and alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is an individual residing in Canyon County, Idaho.
2. On information and belief, defendants Bernardino Barraza and Liobaldo Garza are individuals residing in Canyon County, Idaho.
3. The subject of this litigation is the real property located in Canyon County, Idaho, commonly known as 29452 Pearl Road, Parma, Idaho (the "Subject Property"), which is more accurately described as follows:

A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence North 0°07' East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence South 55°15' East 336.82 feet; thence South 0°07' West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence South 89°35' West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.

4. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code Section 1-705.
5. Pursuant to Idaho Code Section 5-514(a) and (b), this Court has personal jurisdiction over Defendants in this action because Defendants are residents of and have transacted business within the State of Idaho, in connection with the transactions and occurrences underlying Plaintiff's claims for relief set forth herein.

6. Venue of this action properly lies in Canyon County, Idaho, pursuant to Idaho Code Section 5-401, because the real property which is the subject of this action is located in Canyon County.

### **GENERAL ALLEGATIONS**

7. Plaintiff realleges paragraphs 1-6 as if fully set forth herein.

8. By Quitclaim Deed executed on June 13, 2007, Juan Cuevas and Yrene Baez quitclaimed to Plaintiff all right title and interest in the following Subject Property. Said quit claim deed was recorded in Canyon County as Records Instrument No. 2007043067.

9. Since obtaining title to the aforementioned property, Plaintiff has been in actual, peaceful possession of said property, made substantial and valuable improvements thereon, and paid property taxes as they came due and owing.

10. In the Spring of 2009, Plaintiff attempted to pay the property taxes associated with the Subject Property and was informed by an individual at the office of the tax assessor that Plaintiff no longer held title to the Subject Property by virtue of the "Judgment and Decree Quieting Title" entered in Case No. CV-07-3536 in favor of Defendants. Though Plaintiff's predecessor in interest was a party to Case No. CV-07-3536, Plaintiff obtained title to the Subject Property during the pendency of the litigation. Despite properly recording his interest in the Subject Property, Plaintiff was never made a party to such litigation and did not, at any time, receive any notice of any pleadings filed in such litigation.

11. Plaintiff remains in peaceful, actual possession of the Subject Property and has not received any notice or communication from Defendants regarding their alleged ownership of the Subject Property.



**FIRST CLAIM FOR RELIEF  
(Quiet Title)**

12. Plaintiff realleges paragraph 1 through 11 above as though fully set forth herein.

13. Plaintiff is the rightful owner of the Subject Property.

14. Defendants have claimed an ownership interest in the Subject Property that is adverse to that of Plaintiff.

15. Plaintiff is entitled to an Order from this Court quieting title to the Subject Property in the name of Plaintiff.

**SECOND CLAIM FOR RELIEF  
(Quantum Meruit / Unjust Enrichment)**

16. Plaintiff realleges paragraphs 1 through 15 above and incorporates the same herein by reference.

17. In the alternative, if this Court finds that Plaintiff is not the rightful owner of the Subject Property, the quit claim deed filed in the records of Canyon County as Recorders Instrument Number 2007043067 transferred all right, title, and interest of Juan Cuevas and Yrene Baez in the Subject Property to Plaintiff including any and all equitable interest as the vendor in a land sales contract.

18. On information and belief, Defendants entered into a contract with Juan Cuevas and Yrene Baez for the purchase of the Subject Property for the stated purchase price of Eighty Thousand Dollars (\$80,000.00).

19. On information and belief, only Twenty-Two Thousand Six Hundred Thirty-Five Dollars and Seventy-Six Cents (\$22,635.76) of the stated purchase price has been paid.

20. Defendants have received the benefit of a judgment quieting title to the Subject Property in their favor though Defendants have not paid the full stated purchase price for the Subject Property.

21. During the time Plaintiff has been in actual, peaceful possession of the Subject Property, Plaintiff has made valuable improvements thereon and paid property taxes and other maintenance expenses as they became due and owing.

22. It would be inequitable to allow Defendants to retain the benefit of title to the Subject Property without paying the full purchase price agreed to obtain title to the Subject Property.

23. It would be inequitable to allow Defendants to retain the benefit of Plaintiff's valuable improvements, tax payments, and maintenance expenditures on the Subject Property without reasonable compensation therefore.

24. As a result of such unjust enrichment and/or quantum meruit, Plaintiff is entitled to a judgment against Defendants for the remaining purchase price of the Subject Property, the value of all improvements made upon the Subject Property by Plaintiff, the value of all tax payments made for the benefit of the Subject Property, as well as the value of all expenditures made in the reasonable and necessary maintenance of the Subject Property.

#### **ATTORNEY FEES**

25. The Defendants' actions have required Plaintiff to retain counsel to represent their interests. Plaintiff is, therefore, entitled to the recovery of his costs and attorney fees pursuant to Idaho Code Section 12-120 and/or 12-121. If this matter shall proceed by default, Plaintiff is entitled to reasonable attorneys fees in the amount of \$5,000.00.

WHEREFORE, Plaintiff prays for relief as follows:

1. With respect to the first claim for relief, a judgment against Defendants quieting title to the Subject Property in the name of Plaintiff;

2. In the alternative and with respect to the second claim for relief, a judgment against Defendants for the remaining balance of the purchase price of the Subject Property, plus the reasonable value of improvements made by Plaintiff thereon, plus the value of taxes paid by Plaintiff for the benefit of the Subject Property, plus the value of maintenance expenditures made by the Plaintiff for the benefit of the Subject Property, plus interest;

3. For Plaintiff's costs and attorneys fees;

4. For such other and further relief as this Court deems just, equitable, and proper.

DATED this 6<sup>th</sup> day of August, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By RLA  
Rebecca A. Rainey – Of the Firm  
Attorneys for Plaintiff

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

FILED  
135 A.M. P.M.

AUG 28 2009

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any), LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED  
IN EXHIBIT "A", COMMONLY KNOWN  
AS 29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

ANSWER

COMES NOW, Defendant Bernardino Barraza, by and through his attorney of  
record, Robert Ward of the firm Hall, Friedly & Ward, and in answer to the Complaint to  
Quiet Title filed herein by the Plaintiff, admits, denies and alleges as follows:

I

The Defendant denies each and every allegation of the Complaint for Quiet Title  
not hereinafter specifically admitted.

//

//

II

Defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6 and 7 of Plaintiff's Complaint to Quiet Title.

III

Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint to Quiet Title.

IV

In response to paragraph 8 of Plaintiff's Complaint to Quiet Title, Defendant admits that a Quitclaim Deed was recorded purporting that Juan Cuevas and Yrene Baez were quitclaiming whatever interest they may have in said Subject Property to Plaintiff.

V

In response to paragraph 9 of Plaintiff's Complaint to Quiet Title, Defendant admits Plaintiff has been in possession of said Subject Property.

VI

In response to paragraph 10 of Plaintiff's Complaint to Quiet Title, Defendant admits in the Spring of 2009, Plaintiff attempted to pay the property taxes associated with the Subject Property and was informed by an individual at the office of the tax assessor that Plaintiff no longer held title to the Subject Property by virtue of the "Judgment and Decree Quieting Title" entered in Case No. CV-07-3536 in favor of Defendant, Bernardino Barraza.

VII

In response to paragraph 11 of Plaintiff's Complaint to Quiet Title, Defendant admits that Plaintiff is currently in possession of the Subject Property.

VIII

In response to Plaintiff's First Claim for Relief (Quiet Title) of Plaintiff's Complaint to Quiet Title, Defendant admits that Defendant, Bernardino Barraza, has claimed an ownership interest and is the legal owner of the subject property.

IX

In response to Plaintiff's Second Claim for Relief (Quantum Meruit/Unjust Enrichment) of Plaintiff's Complaint to Quiet Title, Defendant admits that Defendant, Bernardino Barraza, entered into a contract with Juan Cuevas which was litigated in Canyon County Case No. CV-07-3536, which resulted in a judgment quieting title to the Subject Property in Defendant, Bernardino Barraza's, name. Defendant denies the remainder of said claim.

FIRST AFFIRMATIVE DEFENSE

Unclean hands in that Plaintiff received the Quitclaim Deed during litigation between his predecessor in interest and Defendant; and took no action to notify Defendant of any possible transfer of any interest.

SECOND AFFIRMATIVE DEFENSE

Plaintiff should be equitably estopped from claiming any interest in the Subject Property.

THIRD AFFIRMATIVE DEFENSE

Res judicata in that ownership of the Subject Property was already adjudicated.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff could not acquire by Quitclaim Deed ownership of the Subject Property since his predecessor in title was not the owner of the property.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff should be estopped from claiming any equitable remedy of unjust enrichment due to Plaintiff's unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not the real party in interest regarding any contract which was never assigned to Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff was aware of the previous quiet title action between his predecessor in interest and Defendant, and was named as one of the possible claimants Does I-X, and took no action to protect any interest he may have had.

DATED this 27 day of August, 2009.

HALL, FRIEDLY & WARD

By 

ROBERT WARD

*Attorneys for Defendant Bernardino  
Barraza*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 27 day of August, 2009, I caused to be served a true and correct copy of Answer by the method indicated below, addressed to the following:

REBECCA A. RAINEY  
MOFFATT, THOMAS, BARRETT, ROCK  
& FIELDS, CHTD.  
P.O. BOX 829  
BOISE, ID 83701  
FAX: (208) 385-5384

☐ U.S. Mail  
☐ Hand Delivered  
☒ Overnight Mail  
☐ FAX

  
\_\_\_\_\_  
Nancy J. Cunningham  
Paralegal to Robert Ward



**F I L E D**  
A.M. 3:03 P.M.

**SEP 21 2009**

**CANYON COUNTY CLERK  
K CANNON, DEPUTY**

Mark C. Peterson, ISB No. 6477  
Rebecca A. Rainey, ISB No. 7525  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 South Capitol Boulevard, 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
mcp@moffatt.com  
rar@moffatt.com  
24163.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any); LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED IN  
EXHIBIT "A", COMMONLY KNOWN AS  
29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

**AFFIDAVIT OF REBECCA A. RAINEY  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

Rebecca A. Rainey, having been duly sworn upon oath, deposes and states as follows:

1. I am an attorney for plaintiff Wilfrido Cuevas in the above-captioned matter and, as such, have personal knowledge of the facts contained herein.

2. Attached hereto as Exhibit A is a true and correct copy of Claim of Lien filed by Bernardino Barraza and Liobaldo Garza dated April 1, 2002, recorded in Canyon County as Instrument Nos. 200220593, 2007007336, and 200666034. *Adm.*

3. Attached hereto as Exhibit B is a true and correct copy of the Judgment quieting title in favor of Juan Cuevas and Yrene Baez recorded in Canyon County as Recorder's Instrument No. 2007033985.

4. Attached hereto as Exhibit C is a true and correct copy of the Quitclaim Deed by Juan M. Cuevas and Yrene Baez recorded on June 20, 2007, in Canyon County as Recorder's Instrument No. 2007043067.

5. Attached hereto as Exhibit D is a true and correct copy of the Lis Pendens recorded on behalf of Bernardino Barraza in Canyon County as Recorder's Instrument No. 2008042920.

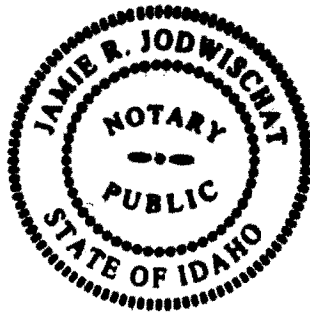
6. Attached hereto as Exhibit E is a true and correct copy of the Judgment and Decree Quieting Title in favor of Bernardino Barraza recorded on March 24, 2009, in Canyon County as Recorder's Instrument No. 2009013757.

Further your affiant sayeth naught.

DATED this 21st day of September, 2009.

Rebecca A. Rainey  
Rebecca A. Rainey

SUBSCRIBED AND SWORN to before me this 21st day of September, 2009.




Jamie R. Jodwischat  
NOTARY PUBLIC FOR IDAHO  
Residing at boise, ID  
My Commission Expires 5.23.12

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of September, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF REBECCA A. RAINEY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward  
HALL, FRIEDLY & WARD  
340 East 2nd North  
Mountain Home, ID 83647  
Facsimile (208) 587-3144  
*Attorneys for Defendant Bernardino Barraza*

(X) U.S. Mail, Postage Prepaid  
( ) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile

  
\_\_\_\_\_  
Rebecca A. Rainey

# **EXHIBIT A**

200666034

RECORDED

2006 APR 14 PM 12 02

C HOEL HALES

CANYON CNTY RECORDER

REQUESTED BY  
TYPE IIIA FEE \$

INSTRUMENT NO.

2007007336

INSTRUMENT NO.

200220593

CLAIM OF LIEN

STATE OF IDAHO )

:SS

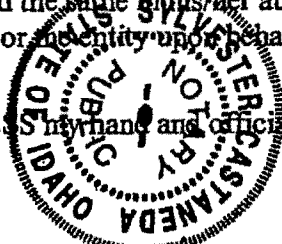
COUNTY OF Canyon )

BEFORE ME, the undersigned Notary Public, personally appeared Bernardino Barraza and Liobaldo Garza, who being first duly sworn, says that he is the lienor herein or the agent of the lienor herein, whose address is 16558 Blue Spruce Rd. Nampa, Id, 83651. and that in accordance with a contract with Juan Manuel Cuevas, lienor furnished labor, services or materials consisting of unpaid refund in the amount \$20,000.00 for the payments on Real estate Title. on the following described real property in Canyon County, State of Idaho, and more fully described as "Exhibit A" Attached and made part hereof. and owned by Juan Manuel Cuevas and Yrene Baez sigle persons. for a total value of Twenty thousand d11s and 00/100 dollars (\$20,000.00) of which there remains unpaid Twenty thousand d11s and 00/100 dollars (\$20,000.00) That the lienor furnished the first of the items on the fifth day of January, 2002, and that the lienor furnished the last of the items on the fifth day of January, 2002. That the lienor served copies of the notice on the contractor on the 7th day of march 2002, 2002 by \_\_\_\_\_, and on the subcontractor on the \_\_\_\_\_ day of \_\_\_\_\_, 2002 by \_\_\_\_\_

+ Bernardino Barraza  
+ Liobaldo Garza  
Lienor or Lienor's Agent

On the first day of April, 2002 before me, a Notary Public, in and for the State of Idaho, personally appeared Bernardino Barraza/Leobaldo Garza known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public for Idaho

Residing at: Nampa, Id, 83651.

My Commission expires: 10/02/07.

000021

# " EXHIBIT A "

A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:

Commencing at the Southwest Corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence North 0 degrees 07' East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence South 55 degrees 15' East 336.82 feet; thence South 0 degrees 07' West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence South 89 degrees 35' West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.

2007007336

RECORDED

2007 JAN 31 AM 9 39

WILLIAM H. HURST  
CANYON CNTY RECORDER  
RY

REQUEST Bernardino Baraza  
TYPE 11/11 FEE 6-

REQUEST Bernardino Baraza  
TYPE Full FEE 6.00

BY Victor  
C NOEL HALES  
CANYON CNTY RECORDER

2002 MAY 6 AM 9 52

RECORDED

200220593

# **EXHIBIT B**

**000023**



COPY

2007033985

ACCOMMODATION

Mark D. Perison, Bar No. 4804

MARK D. PERISON, P.A.

314 S. 9<sup>th</sup> Street, Suite 300

P. O. Box 6575

Boise, Idaho 83707-6575

Telephone: (208) 331-1200

Fax: (208) 343-5838

Attorneys for Plaintiffs

RECORDED

2007 MAY 17 PM 4 25

WILLIAM H. HURST  
CANYON COUNTY RECORDER  
BY *J. McLean*

FILED  
A.M. 3:55 P.M.

MAY 15 2007

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

ALLIANCE - NAMPA

REQUEST  
TYPE *Sum* FEE *900*

IN THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and  
YRENE BAEZ, individuals

Plaintiffs,

vs.

BERNARDINO BARRAZA, an  
individual, LIOBALDO GARZA,  
an individual, and DOES I  
through X, unknown claimants to  
the real property described in  
Exhibit "A" hereto, commonly  
known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV07-3536

JUDGMENT

The Defendants and each of them having been regularly served with process  
and having failed to answer within the time limited therefor by law, and the default

JUDGMENT -- Page 1

000024

of each such Defendant having been entered herein;

NOW, THEREFORE, Upon application of counsel for the Plaintiff, and upon the Affidavit of Plaintiff's counsel that none of the Defendants is an infant or an incompetent person, nor now in the active military service of the United States of America;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED As follows:

Title to the real property set forth in Exhibit "A" hereto, and commonly known as commonly known as 29452 Pearl Road, Parma, Idaho, is quieted in the name of JUAN MANUEL CUEVAS and YRENE BAEZ, as against the claim asserted by Defendants BERNARDINO BARRAZA and LIOBALDO GARZA in Instrument No. 200220593, Official Records of Canyon County and said Instrument is hereby RELEASED from the property for all purposes to the same extent as if Defendants had executed a voluntary release, and Defendants BERNARDINO BARRAZA and LIOBALDO GARZA shall have no further right, title or interest in and to the real property described on Exhibit "A" attached hereto.

DATED: This 11 day of May, 2007.

RENAE HOFF

Honorable James C. Morfitt } ss  
District Judge County of Canyon

I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears in this office.

DATED 5-15-07

WILLIAM W. HOFFST, Clerk of the District Court

By [Signature] Deputy

JUDGMENT -- Page 2

000025

**A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:**

**Commencing at the Southwest corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence  
North 0°07' East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence  
South 55°15' East 336.82 feet; thence  
South 0°07' West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence  
South 89°35' West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.**

**EXHIBIT A**

# **EXHIBIT C**

INSTRUMENT NO. 2007043067

QUITCLAIM DEED

FOR VALUE RECEIVED: Thirty Five Thousand dollars (\$35,000.00)

JUAN M CUEVAS AND YRENE BAEZ

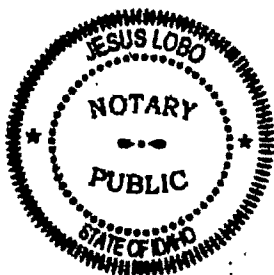
Whose address is: 5019 W EDGE MONT AVE PHOENIX, AZ 85035

Hereinafter called the first party, do hereby convey, release, remise and forever  
QUITCLAIM unto second party: WILFRIDO CUEVAS

The following described premises to-wit:

Parcel no. 06n05w198800  
19 6N-5W SE  
TAX 2-B IN SWSE  
SEE ATTACHED

Dated: 06/13/2007



JUAN M. CUEVAS  
Juan M Cuevas

YRENE BAEZ  
Yrene Baez

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the  
day and year first above written.

State of IDAHO )

:ss

County of Canyon )

On this 13th day of June, 2007 before me, Jesus Lobo, a Notary Public in and for the  
State of Idaho, personally appeared, Juan M Cuevas and Yrene Baez known to me to be the  
persons whose names are subscribed to the within instrument and acknowledged to me that they  
executed the same.

WITNESS my hand and official seal.

Jesus Lobo  
Notary Public for Idaho

My commission expires: 04-19-2012

RECORDED

2007 JUN 20 PM 12 50

WILLIAM H. HURST  
CANYON CNTY RECORDER  
BY William H. Hurst

2007043067

REQUEST William H. Hurst  
TYPE Notary Public

000029

FABER

ax 2-B

DESCRIPTION

A part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 19, Township 6 North, Range 5 West of the Boise Meridian, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 19, township 6 North, Range 5 West of the Boise Meridian, the Initial Point of this description; thence North  $0^{\circ}07'$  East 924 feet, along the West line of the Said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; thence South  $55^{\circ}15'$  East 336.82 feet; thence South  $0^{\circ}07'$  West 730 feet, parallel, to the said West line to appoint on the South line of the Said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; thence South  $89^{\circ}35'$  West 277.15 feet, along the said South line to the Initial Point of this description.

# **EXHIBIT D**

**000030**

2008042920

RECORDED

2008 AUG 6 AM 9 26

WILLIAM H. HURST  
CANYON COUNTY RECORDER  
BY *[Signature]*

REQUEST *Hall & Friedly*  
TYPE *Lis Pendens* 6:00

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action was commenced in the District Court of the  
Third Judicial District of the State of Idaho, in and for the County of Canyon, involving real  
property located in Canyon County and said action is still pending;

The real property which is affected by this action is located in the County of Canyon,  
State of Idaho, and is described as follows:

LIS PENDENS - 1

000031



A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, the INITIAL POINT of this description; thence  
North 0°07' East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence  
South 55°15' East 336.82 feet; thence  
South 0°07' West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence  
South 89°35' West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.

DATED this 31 day of July, 2008.

HALL, FRIEDLY & WARD

By

Robert Ward

Attorneys for Bernardino Barraza

STATE OF IDAHO,

)

) ss.

COUNTY OF ELMORE,

)

On this 31 day of July, 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared ROBERT WARD, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Notary Public for Idaho,  
Residing at Mountain Home, ID  
My commission expires: 1/21/2011

000033

NUMBER

DESCRIPTION

ax 2-B

A part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 19, Township 6 North, Range 5 West of the Boise Meridian, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 19, township 6 North, Range 5 West of the Boise Meridian, the Initial Point of this description; thence North  $0^{\circ}07'$  East 924 feet, along the West line of the Said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; thence South  $55^{\circ}15'$  East 336.82 feet; thence South  $0^{\circ}07'$  West 730 feet, parallel, to the said West line to appoint on the South line of the Said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; thence South  $89^{\circ}35'$  West 277.15 feet, along the said South line to the Initial Point of this description.

# **EXHIBIT E**

2009013757

ROBERT WARD  
HALL, FRIEDLY & WARD  
Attorneys for Defendant Bernardino  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

RECORDED

FILED  
MAR 24 AM 10 11  
A.M. 10 50 P.M.

WILLIAM H. HURST  
CANYON CNTY RECORDER  
BY [Signature]  
T. CRAWFORD, DEPUTY  
CANYON COUNTY CLERK  
REQUESTED BY Hall-Friedly  
TYPE Quiet Title

MAR 17 2009

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

JUDGMENT AND DECREE  
QUIETING TITLE

The above-entitled cause came on regularly before the Court in Caldwell, County  
of Canyon, State of Idaho, on the 16 day of March, 2009. The Plaintiffs, Juan  
Manuel Cuevas and Yrene Baez, having been duly and regularly served with the Order  
Granting Motion to Withdraw as Attorney of Record. The Plaintiffs, Juan Manuel  
Cuevas and Yrene Baez, having failed to file and serve an additional written appearance  
within twenty (20) days of service of the Order Granting Motion to Withdraw as Attorney  
of Record, either in person, by attorney or otherwise, pursuant to the Order Granting  
Motion to Withdraw as Attorney of Record.

JUDGMENT AND DECREE QUIETING TITLE - 1

COPY

000035

The Court has reviewed the record and file in this action and the Answer and Counterclaim of Defendant, Bernardino Barraza, respecting ownership and possession of the real property described therein; the Answer and Counterclaim having been verified; and the Court being satisfied that the relief asked for should be granted.

NOW, THEREFORE, Upon application of counsel of the Defendant, and upon the Affidavit of Defendant that none of the Plaintiffs are infants or incompetent persons, nor now in the active military service of the United States of America;

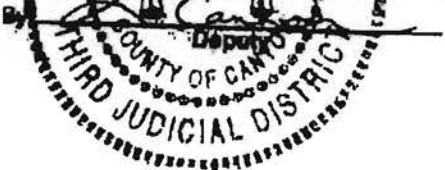
IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the Defendant, Bernardino Barraza, owns in fee simple and is entitled to the quiet and peaceful possession of the parcel of land commonly known as 29452 Pearl Road, Parma, Idaho, situated in the County of Canyon, State of Idaho, and described in Exhibit "A" attached hereto and by reference incorporated herein.
2. That Defendant, Bernardino Barraza's, title to said real property is forever quieted against all claims or demands of the Plaintiffs, Juan Manuel Cuevas and Yrene Baez, in all or any part of said real property.

DATED this 16 day of March, 2008.

State Of Idaho  
County Of Canyon  
I hereby certify that the foregoing instrument  
is a true and correct copy of the original as  
the same appears in this office.  
DATED

WILLIAM H. HURLEY, Clerk of the District Court



THOMAS J. IRVING  
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of March, 2009, a

true and correct copy of the within and foregoing document was served upon:

Robert Ward  
Hall, Friedly & Ward  
340 E. 2<sup>nd</sup> North  
Mountain Home, ID 83647

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Juan Manuel Cuevas  
Yrene Baez  
5019 W. Edgemont Avenue  
Phoenix, AZ 85035

*No Envelope*

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

*[Signature]*  
Clerk of Court

A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence North  $0^{\circ}07'$  East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence South  $55^{\circ}15'$  East 336.82 feet; thence South  $0^{\circ}07'$  West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence South  $89^{\circ}35'$  West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.

EXHIBIT A

**F I L E D**  
A.M. 3:03 P.M.

**SEP 21 2009**

**CANYON COUNTY CLERK  
K CANNON, DEPUTY**

Mark C. Peterson, ISB No. 6477  
Rebecca A. Rainey, ISB No. 7525  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 South Capitol Boulevard, 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
mcp@moffatt.com  
rar@moffatt.com  
24163.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any); LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED IN  
EXHIBIT "A", COMMONLY KNOWN AS  
29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

**AFFIDAVIT OF WILFRIDO CUEVAS  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**



STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

Wilfrido Cuevas, having been duly sworn upon oath, deposes and states as follows:

1. I am the plaintiff in the above captioned action and, as such, have personal knowledge of the facts set forth herein.

2. I began purchasing the property under an oral agreement with Juan Cuevas and Yrene Baez in August of 2003. At that time I moved onto the property with my son and daughter-in-law and grandchildren.

3. Since I began purchasing the property, I have made several improvements. These improvements included, but are not limited to, cleaning the weeds off the property, landscaping, installation of an underground irrigation system, improvements to the septic and sewer system, and building of fences for animals that are kept on the property. True and correct copies of receipts evidencing such improvements are attached hereto as Exhibit A.

A. I have also paid property taxes on the property since August of 2003. Attached thereto as Exhibit B are documents showing the amount of taxes I have paid on the property.

4. Beginning in August of 2003, I have made payments to Juan Cuevas and Yrene Baez pursuant to our oral agreement for purchase of the property. These payments varied in amount but were not less than \$800.00 per month. Documents attached hereto as Exhibit C are true and correct copies of the deposit receipts evidencing the wire transfers made to Juan Cuevas and Yrene Baez. Additional payments were made in cash for which there are no receipts.

5. On June 13, 2007, Juan Cuevas and Yrene Baez executed a quitclaim transferring all of their interest in the property to me. I had the quitclaim deed recorded in Canyon County as Recorder's Instrument No. 2007043067. A true and correct copy of the quit claim deed is attached hereto as Exhibit D.

6. I was aware that Juan Cuevas had brought a lawsuit against Bernardino Barraza and Liobaldo Garza because of a \$20,000 claim of lien that was filed against the property. At that time, I paid the remaining balance owed to Juan Cuevas and Yrene Baez for full purchase of the property. At the time Juan Cuevas and Yrene Baez executed the quitclaim deed transferring their interest in the property to me, it was my understanding that Juan Cuevas had prevailed in that lawsuit and obtained a judgment in his favor.

7. Prior to recording the quit claim deed, I checked the land records in Canyon County to make sure that no other persons were claiming an interest in the property.

8. I was not aware that Bernardino Barraza and/or Liobaldo Garza had taken any actions in the lawsuit that could affect title to the property or even that the lawsuit was still pending.

9. I first became aware of that the lawsuit involving the property had resulted in a judgment against Juan Cuevas when I tried to pay my property taxes on June 12, 2009. At that time, the clerk at the county assessor's office informed me that a judgment had been entered and that I was no longer the owner of the property.

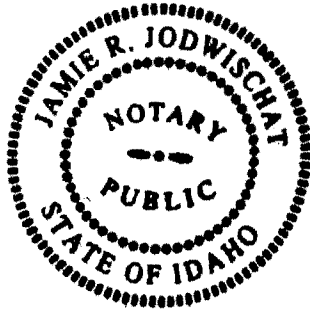
10. I have never been contacted by Bernardino Barraza regarding his claimed ownership of the property.

Further your affiant sayeth naught.

DATED this 17 day of September, 2009.

Wilfrido Cuevas  
Wilfrido Cuevas

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of September, 2009.



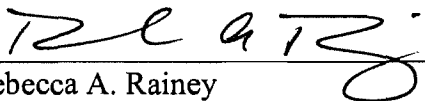
Jamie R. Jodwischat  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, ID  
My Commission Expires 5-23-12

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of September, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF WILFRIDO CUEVAS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward  
HALL, FRIEDLY & WARD  
340 East 2nd North  
Mountain Home, ID 83647  
Facsimile (208) 587-3144  
*Attorneys for Defendant Bernardino Barraza*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Rebecca A. Rainey

# **EXHIBIT A**

000044

# URIA PUMP

P.O. BOX 805  
HOMEDALE, ID 83628  
PHONE: (208) 337-3954

## AUTHORIZED DEALER FOR

Grundfos Pumps  
Jacuzzi Pumps  
Well-X-Trol Pressure Tanks  
All Type Excavating  
Complete Septic & Drain Systems

To Wilfredo Cuevas  
29452 Pearl Rd  
Parma Id 83660

Date 4/25/06  
Authorized by Wilfredo Cuevas  
Phone 533-8080 722-7560

**TERMS:** 2% carrying charge on past due accounts (\$1.00 minimum). Net 10 days.

Quantity	Description	Price Each	Amount
4/23/06	Service Call, we checked the pump + found that the pump was clogged in the well + needed to be pulled out		
4/24/06	we pulled the pump, with the boom truck + found that the galv. pipe was bad + also the pump, so we replaced them + installed a new 10 GPM pump + material		
1	10 GPM Jacuzzi Pump + Motor		599 <sup>50</sup>
1	Splice Kit + tape		18 <sup>00</sup>
1	1 1/4" x 1" Brass coupling	5 <sup>20</sup>	5 <sup>20</sup>
2	1" Brass Male adapt.	5 <sup>20</sup>	11 <sup>40</sup>
1	1" Brass Coupling	4 <sup>80</sup>	4 <sup>80</sup>
1	1" x 6" Brass nipple	10 <sup>20</sup>	10 <sup>20</sup>
4	#16 SS clamps	90	360
68'	#12/4 Flat Sub-wire	85/F	5780
1	5 year warranty on pump + motor only		40 <sup>00</sup>
60'	1" 160 lb Poly Pipe	2.74/F	1300
	Materials		7360
	Service Call, Boom truck + Labor		185 <sup>00</sup>
	<b>Total Now Due</b>		<b>1278<sup>60</sup></b>
	<b>NET DUE IN 10 DAYS</b>		

Parts, only, guaranteed for one year.

Thank you!

Costs plus reasonable attorney fees to be added in case of suit for collection.

*Thank you*

000045

29792 Parma Rd.  
Parma, ID 83660

~~FAX 722-7903~~  
~~CELL 888-8802~~

C. 541-212-615

[illegible]

000046



# Chuck, Bill & Ray Maxwell

BILL  
10 MANUEL MARTINEZ

[illegible]

REC'D BY Amy Cuevas DATE 7-5-09  
CUSTOMER COPY

000047



# **EXHIBIT B**

000048

MODE:F ACTION:

TRQK7:

=====  
System User- STEPHENS Date 09/17/2009 Time 12:53  
2003 TAX PAYMENT DETAIL

Account Number 3R39350-000- -0

CUEVAS, JUAN M

& BAEZ, YRENE

SEC 19-6N-5W SE

TAX 2-B IN SWSE

29452 PEARL RD  
PARMA ID 83660

29452 PEARL RD, PA

=====  
Date Pd Packet/Trans Amt Paid Lt Chg Interest Cost Payment  
TX 03/19/2004 403020 70 198.20 3.97 5.25 .00 207.42  
TX 06/14/2004 406041 85 472.34 2.75 7.91 .00 483.00

Information shown on this screen is subject to change without notice  
=====

000049

CANYON COUNTY TAX RECEIPT  
CHECKS SUBJECT TO BANK CLEARANCE

2002 Real Property.  
Account # 2R39350-000- -0

Parcel # 06N05W19&800

March 19, 2004  
Packet # 020070

Site address: 29452 PEARL RD, PA

Tax  
79.21

Late Chg  
1.58

Interest  
11.79

Cost  
.00

Total Paid  
92.58

CUEVAS, JUAN M  
& BAEZ, YRENE  
29452 PEARL RD  
PARMA ID 83660

TRQZ707b

000050

CANYON COUNTY TAX RECEIPT  
CHECKS SUBJECT TO BANK CLEARANCE

2003 Real Property  
Account # 3R39350-000- -0

Parcel # 06N05W198800

March 19, 2004  
Packet # 020070

Site address: 29452 PEARL RD, PA

Tax  
198.20

Late Chg  
3.97

Interest  
5.25

Cost  
.00

Total Paid  
207.42

CUEVAS, JUAN M  
& BAEZ, YRENE  
29452 PEARL RD  
PARMA ID 83660

TRQZ707b

*Not English*

*100  
50  
300*

TOTAL TRANSACTION

*300.00*

000051

CANYON COUNTY TAX RECEIPT  
CHECKS SUBJECT TO BANK CLEARANCE

2003 Manufactured Housing  
Account # 3T70473-000- -0

Parcel # 6NSW19R70473

June 14, 2004  
Packet # 041085

Site address: 29452 PEARL RD, PA

Tax	Late Chg	Interest	Cost	Total Paid
114.50	.00	.00	.00	114.50

CUEVAS, JUAN OR  
BAEZ, YRENE  
29452 PEARL RD  
PARMA ID 83660

TRQZ707b

000052

CANYON COUNTY TAX RECEIPT  
CHECKS SUBJECT TO BANK CLEARANCE

2003 Real Property  
Account # 3R39350-000- -0

Parcel # 06N05W198800

June 14, 2004  
Packet # 041085

Site address: 29452 PEARL RD, PA

Tax  
472.34

Late Chg  
2.75

Interest  
1.50

Cost  
.00

Total Paid  
483.00

CUEVAS, JUAN M  
& BAEZ, YRENE  
29452 PEARL RD  
PARMA. ID 83660

TRQZ707b

722-7560

16-20  
2-5  
TOTAL TRANSACTION

597.50

000053

MODE:F ACTION:

TRQK729

=====

System User-	DARBIN	Date	09/17/2009	Time	13:37
--------------	--------	------	------------	------	-------

2004 TAX PAYMENT DETAIL

Account Number 4T70473-000- -0

CUEVAS, JUAN OR

SEC 19- - SE

BAEZ, YRENE

29452 PEARL RD

24ES3803

PARMA ID 83660

1972 BROADMORE (24 X 60)

=====

Date Pd	Packet/Trans	Amt Paid	Lt Chg	Interest	Cost	Payment
TX 12/27/2004	412L04 20	232.84	2.33	.00	.00	235.17

Information shown on this screen is subject to change without notice

=====

000054

MODE:F ACTION:

TRQK729

=====

System User- DARBIN	Date 09/17/2009	Time 13:36
---------------------	-----------------	------------

2004 TAX PAYMENT DETAIL

Account Number 4R39350-000- -0

CUEVAS, JUAN M

& BAEZ, YRENE

SEC 19-6N-5W SE

TAX 2-B IN SWSE

29452 PEARL RD

PARMA ID 83660

29452 PEARL RD, PA

=====

	Date Pd	Packet/Trans		Amt Paid	Lt Chg	Interest	Cost	Payment
TX	12/27/2004	412L04	20	259.65	5.18	.00	.00	264.83
TX	06/17/2005	506072	74	478.21	2.18	6.27	.00	486.66

Information shown on this screen is subject to change without notice

=====

000055



MODE:F ACTION:

TRQK729

=====

System User- DARBIN	Date 09/17/2009	Time 13:37
---------------------	-----------------	------------

2005 TAX PAYMENT DETAIL

Account Number 5T70473-000- -0

CUEVAS, JUAN OR

SEC 19- - SE

BAEZ, YRENE

29452 PEARL RD

24ES3803

PARMA ID 83660

1972 BROADMORE (24 X 60)

=====

Date	Pd	Packet/Trans	Amt Paid	Lt Chg	Interest	Cost	Payment
TX 12/14/2005		512088 47	232.48	.00	.00	.00	232.48

Information shown on this screen is subject to change without notice

=====

000056

MODE:F ACTION:

TRQK729

=====

System User-	DARBIN	Date	09/17/2009	Time	13:36
--------------	--------	------	------------	------	-------

2005 TAX PAYMENT DETAIL

Account Number 5R39350-000- -0

CUEVAS, JUAN M

& BAEZ, YRENE

SEC 19-6N-5W SE

TAX 2-B IN SWSE

29452 PEARL RD

PARMA ID 83660

29452 PEARL RD, PA

=====

Date	Pd	Packet/Trans	Amt Paid	Lt Chg	Interest	Cost	Payment	
TX	04/19/2006	604013	1	737.34	7.38	13.46	.00	758.18

Information shown on this screen is subject to change without notice

=====

000057

MODE:F ACTION:

TRQK729

=====

System User- DARBIN Date 09/17/2009 Time 13:38

2006 TAX PAYMENT DETAIL

Account Number 6T70473-000- -0

CUEVAS JUAN

SEC 19- - SE

BAEZ YRENE

29452 PEARL RD

24ES3803

PARMA ID 83660

1972 BROADMORE (24 X 60)

=====

Date	Pd	Packet/Trans	Amt Paid	Lt Chg	Interest	Cost	Payment
TX 12/19/2006		612139 81	209.80	.00	.00	.00	209.80

Information shown on this screen is subject to change without notice

=====

000058

MODE:F ACTION:

TRQK729

=====

System User- DARBIN Date 09/17/2009 Time 13:37

2006 TAX PAYMENT DETAIL

Account Number 6R39350-000- -0

CUEVAS JUAN M

BAEZ YRENE

SEC 19-6N-5W SE

TAX 2-B IN SWSE

29452 PEARL RD

PARMA ID 83660

29452 PEARL RD, PA

=====

	Date	Pd	Packet/Trans		Amt Paid	Lt Chg	Interest	Cost	Payment
TX	03/31/2007		703V01 4		650.67	6.68	10.07	.00	667.42
TX	05/31/2007		705029 69		16.75	.00	.00	.00	16.75

Information shown on this screen is subject to change without notice

=====

000059



**CANYON COUNTY CONSOLIDATED PROPERTY TAX BILL**  
TRACIE LLOYD  
CANYON COUNTY TREASURER & TAX COLLECTOR  
FOR TAXING DISTRICTS OF CANYON COUNTY (208)454-7354

**2007 REAL PROPERTY  
REGULAR TAX ROLL**

**DUE DATE:  
DECEMBER 20, 2007**

PIN: 39350000 0	
Property Description: 19-6N-5W SE AX 2-B IN SWSE T70473	
Code Area: 049-00	T
Property Address: 29452 PEARL RD PA ID	

39350000 0  
20940 \*\*\*\*\*5-DIGIT 83660



WILFRIDO CUEVAS  
29452 PEARL RD  
PARMA ID 83660-6338

LAND VALUE	55,560
IMPROVEMENT VALUE	7,100
<b>Total Taxable</b>	<b>62,660</b>

**DELINQUENCIES:**

THIS IS A LISTING OF THE TOTAL AMOUNT YOU PAY EACH TAXING DISTRICT, INCLUDING BONDS, OVERRIDES AND CERTIFICATIONS IF APPLICABLE. CALL THE NUMBER LISTED BELOW WITH QUESTIONS REGARDING THE TAXING DISTRICT AND THE CHARGED AMOUNT.

112 PEST	3.18
653 AMBULANCE DI	11.00
693 HWY 2	103.44
715 PARMA FIRE	72.22
736 PARMA CEMETE	10.44
768 PARMA SCHL 1	353.22
998 CANYON COUNT	246.20
786 DRAIN #3	14.28
ADMINISTRATIVE ADJUSTMENT:	
TOTAL TAX BILLED:	
ADVANCE PAYMENTS PRIOR TO 10/01/2007:	
STATE APPROVED PROPERTY TAX REDUCTION:	
<b>TOTAL TAXES DUE:</b>	<b>813.98</b>

IF YOU HAVE SOLD THIS PROPERTY OR A MORTGAGE COMPANY IS RESPONSIBLE FOR PAYING THIS TAX, PLEASE FORWARD THIS BILL IMMEDIATELY.

**QUESTIONS ABOUT YOUR ASSESSED  
VALUE? CALL THE ASSESSOR AT  
(208) 454-7431**

IF ANY PORTION OF THE TAX BECOMES DELIN-  
QUENT A 2% LATE CHARGE WILL BE APPLIED.  
INTEREST ON THE DELINQUENT  
BALANCE WILL ACCRUE AT 1% PER MONTH,  
DATING FROM JANUARY 1ST.  
WHEN PAYING DELINQUENT BALANCES, PLEASE  
CALL (208)454-7354 FOR THE CORRECT AMOUNT  
DUE INCLUDING LATE CHARGE AND INTEREST

**MONTHLY PAYMENTS ARE ACCEPTED**

**\*\*\*IMPORTANT\*\*\*  
PLEASE READ BOTH FRONT AND BACK OF  
THIS NOTICE**

TO AVOID LATE CHARGE & INTEREST, THE  
FULL AMOUNT OR FIRST HALF TAX MUST BE PAID  
IN PERSON OR HAVE A U.S. POSTMARK  
NO LATER THAN

**DECEMBER 20, 2007**

CREDIT CARD PAYMENTS ACCEPTED VIA INTERNET OR  
BY DIALING 1-800-272-9829 AND ENTERING YOUR BILL  
NUMBER AND JURISTCTION CODE #2214. WE ARE  
CURRENTLY UNABLE TO PROCESS CREDIT CARD

000060

Received By: Cashier3 Receipt Number: U07.4126  
 Location: COUNTY Receipt Year: 2007  
 Session: Cashier3-Cashier3-12192007-0 Date Received: 12/19/2007

## PAYMENT RECEIPT

Type	Description	Balance	Net Tax	Interest	Fees/Late Charges	Current Due	Current Paid	Balance Remaining
Real Property	Bill Number: 2007078165 Bill Year: 2007 PIN: 39350000 0 AIN: 06N05W198800 Primary Owner: WILFRIDO CUEVAS Property Addr: 29452 PEARL RD PA ID Property Desc: 19-6N-5W SE TAX 2-B IN SWSE T70473	813.98	500.00	0.00	0.00	500.00	500.00	313.98
<b>Totals:</b>		813.98	500.00	0.00	0.00	500.00	500.00	313.98
<b>Tender Information:</b>		<b>Charge Summary:</b>						
Cash		500.00	Real Property					500.00
Total Tendered		500.00	Total Charges					500.00

Canyon

By Whom Paid:

WILFRIDO CUEVAS  
 712035  
 29452 PEARL RD  
 PARMA ID 83660

CHARGES	500.00
PAID	500.00
BALANCE REMAINING	313.98
AMOUNT TENDERED	500.00
CHANGE	0.00

000061



# CANYON COUNTY CONSOLIDATED PROPERTY TAX BILL

TRACIE LLOYD  
CANYON COUNTY TREASURER & TAX COLLECTOR  
FOR TAXING DISTRICTS OF CANYON COUNTY (208)454-7354

2007 PROPERTY TAX  
REGULAR ROLL

DUE DATE:  
**MARCH 20, 2008**

PIN: 70473000 0	
Property Description: 19-6N-5W SE R39350000 0 1972 BROADMORE 24 X 60 VIN 24ES3803 TITLE C531744	
Code Area: 049-00	
Property Address: 29452 PEARL RD	

70473000 0  
1619 \*\*\*\*\*3-DIGIT 836



WILFRIDO CUEVAS  
29452 PEARL RD  
PARMA ID 83660-6338

LAND VALUE 0  
IMPROVEMENT VALUE 12,700  
Total Taxable 12,700

## DELINQUENCIES:

THIS IS A LISTING OF THE TOTAL AMOUNT YOU PAY EACH TAXING DISTRICT, INCLUDING BONDS, OVERRIDES AND CERTIFICATIONS IF APPLICABLE. CALL THE NUMBER LISTED BELOW WITH QUESTIONS REGARDING THE TAXING DISTRICT AND THE CHARGED AMOUNT.

112 PEST	0.64
653 AMBULANCE DI	2.24
693 HWY 2	20.96
715 PARMA FIRE	14.64
736 PARMA CEMETE	2.12
768 PARMA SCHL 1	71.60
998 CANYON COUNT	49.88
ADMINISTRATIVE ADJUSTMENT:	
TOTAL TAX BILLED:	
ADVANCE PAYMENTS PRIOR TO 10/01/2007:	
STATE APPROVED PROPERTY TAX REDUCTION:	
TOTAL TAXES DUE:	0.00

IF YOU HAVE SOLD THIS PROPERTY OR A MORTGAGE COMPANY IS RESPONSIBLE FOR PAYING THIS TAX, PLEASE FORWARD THIS BILL IMMEDIATELY.

**QUESTIONS ABOUT YOUR ASSESSED VALUE? CALL THE ASSESSOR AT (208) 454-7431**

IF ANY PORTION OF THE TAX BECOMES DELINQUENT A 2% LATE CHARGE WILL BE APPLIED. INTEREST ON THE DELINQUENT BALANCE WILL ACCRUE AT 1% PER MONTH, DATING FROM JANUARY 1ST. WHEN PAYING DELINQUENT BALANCES, PLEASE CALL (208)454-7354 FOR THE CORRECT AMOUNT DUE INCLUDING LATE CHARGE AND INTEREST!

MONTHLY PAYMENTS ARE ACCEPTED

**\*\*\*IMPORTANT\*\*\***  
PLEASE READ BOTH FRONT AND BACK OF THIS NOTICE

TO AVOID LATE CHARGE & INTEREST, THE FULL AMOUNT OR FIRST HALF TAX MUST BE PAID IN PERSON OR HAVE A U.S. POSTMARK NO LATER THAN

**MARCH 20, 2008**

CREDIT CARD PAYMENTS ACCEPTED VIA INTERNET OR BY DIALING 1-800-272-9829 AND ENTERING YOUR BILL NUMBER AND JURISTITION CODE #2214. WE ARE CURRENTLY UNABLE TO PROCESS CREDIT CARD

KEEP TOP PORTION FOR YOUR RECORDS

**MAKE CHECKS PAYABLE TO:** CANYON COUNTY TAX COLLECTOR  
Tracie Lloyd  
1115 Albany St., Room 342  
P.O. Box 730  
Caldwell, Idaho 83606

MAR. 20 2008

DELINQUENCIES:

PIN: 70473000 0

WILFRIDO CUEVAS  
29452 PEARL RD  
PARMA ID 83660-6338

RETURN THIS STUB WITH YOUR PAYMENT. PLEASE INDICATE IF PAYING 1ST HALF OR OTHER AMOUNT PAID, AND WRITE THE PIN NUMBER ON YOUR CHECK.

1ST HALF 0.00

Full Amount 0.00

70473000 000000000000000000000000



000062

0001673



# CANYON COUNTY CONSOLIDATED PROPERTY TAX BILL

TRACIE LLOYD  
CANYON COUNTY TREASURER & TAX COLLECTOR  
FOR TAXING DISTRICTS OF CANYON COUNTY  
P.O. Box 730  
Caldwell, ID 83605 Phone: (208)454-7354

2007 Reminders  
Regular Tax Roll

DUE DATE:

JUNE 20, 2008

PIN: 39350000 0	
BILL NUMBER: 2007078165	
Property Description: 19-6N-5W SE TAX 2-B IN SWSE T70473	Code Area: 049-00
Property Address: 29452 PEARL RD PA ID	

39350000 0  
14749 \*\*\*\*\*5-DIGIT 83660



WILFRIDO CUEVAS  
29452 PEARL RD  
PARMA ID 83660-6338

Total Taxable 62,660

To Pay by Credit Card

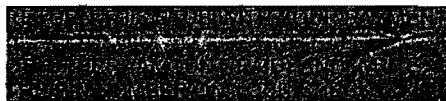


Visit [www.officialpayments.com](http://www.officialpayments.com)  
Or call 1-800-2PAY-TAX (800)272-9829  
( Use Jurisdiction Code 2214)

PIN	YEAR	BILL NUMBER	CHARGES	INTEREST	PEN/FEES	PAID	BALANCE
39350000 0	2007	2007078165	813.98	0.00	0.00	500.00	313.98

KEEP TOP PORTION FOR YOUR RECORDS

WILFRIDO CUEVAS  
29452 PEARL RD  
PARMA ID 83660-6338



1ST HALF PAST DUE	0.00
2ND HALF CURRENT DUE	313.98
TOTAL NOW DUE	313.98

PIN: 39350000 0

BILL #: 2007078165

MAKE CHECKS PAYABLE TO:

39350000 000000313980000031398



\* 3 9 3 5 0 0 0 0 0 \*



CANYON COUNTY TAX COLLECTOR

Tracie Lloyd  
1115 Albany St., Room 342  
P.O. Box 730  
Caldwell, Idaho 83606-0730

MAY 30 2008

000063

0017958



Received By:

Cashier3

Receipt Number:

U07.1641

Location:

COUNTY

Receipt Year:

200

Session:

Cashier3-Cashier3-05292008-0

Date Received:

05/29/200

## PAYMENT RECEIPT

Type	Description	Balance	Net Tax	Interest	Fees/Late Charges	Current Due	Current Paid	Balance Remaining
Real Property	Bill Number: 2007078165 Bill Year: 2007 PIN: 39350000 0 AIN: 06N05W198800 Primary Owner: WILFRIDO CUEVAS Property Addr: 29452 PEARL RD PA ID Property Desc: 19-6N-5W SE TAX 2-B IN SWSE T70473	313.98	313.98	0.00	0.00	313.98	313.98	0.00
<b>Totals:</b>		313.98	313.98	0.00	0.00	313.98	313.98	0.00
<b>Tender Information:</b>		<b>Charge Summary:</b>						
Check #219		313.98	Real Property					313.98
Total Tendered		313.98	Total Charges					313.98

Canyon

By Whom Paid:

WILFRIDO CUEVAS  
 805020  
 29452 PEARL RD  
 PARMA ID 83660

<b>CHARGES</b>	313.98
<b>PAID</b>	313.98
<b>BALANCE REMAINING</b>	0.00
<b>AMOUNT TENDERED</b>	313.98
<b>CHANGE</b>	0.00

000064



**Gene T Kue**  
Canyon County Assessor  
1115 Albany St. - Room 343  
Caldwell, ID 83605

**2008**  
**ASSESSMENT NOTICE**

**THIS IS NOT A BILL.  
DO NOT PAY.**

**PARCEL DESCRIPTION:**

39350000 0  
19-6N-5W SE  
TAX 2-B IN SWSE T70473

For any questions, please notify the Assessor's Office immediately

**Annual - Real Property 5/28/2008**

Assessor's Telephone Number: 208-454-7431

Parcel Address:

29452 PEARL RD PA ID

06N05W198800  
51709 \*\*\*\*\*5-DIGIT 83660



CUEVAS WILFRIDO  
29452 PEARL RD  
PARMA ID 83660-6338

Appeals of your property value must be filed in writing, on a form provided by the County, by:

6/23/2008

Tax Code Area: 049-00

Parcel Number:

ALT PIN: 06N05W198800

**ASSESSED VALUE OF YOUR PROPERTY**

CURRENT DESCRIPTION	LOTS/ACRES	LAST YEAR'S VALUE	CURRENT YEAR'S VALUE
12 Total Rural res tract Mkt Value		55,560	55,560
32 Mkt Value		7,100	7,100
<b>SUBTOTAL:</b>		<b>62,660</b>	<b>62,660</b>
<b>LESS HOMEOWNERS EXEMPTION:</b>			<b>15,000</b>
<b>NET TAXABLE PROPERTY VALUE:</b>		<b>62,660</b>	<b>47,660</b>

These values may not include personal property values. Taxes are based on the values shown on this Notice and on the Budgets of the taxing districts.

**TAXING DISTRICT INFORMATION**

TAXING DISTRICTS	PHONE NUMBER	DATE OF PUBLIC BUDGET HEARING
653 AMBULANCE DISTRICT	208-466-8800	8/13/2008
998 CANYON COUNTY	208-454-7507	8/13/2008
693 NOTUS-PARMA HWY #2	208-722-5343	8/12/2008
736 PARMA CEMETERY	208-722-5343	8/7/2008
715 PARMA FIRE	208-722-5745	8/13/2008
768 PARMA SCHOOL DIST #137	208-722-5115	6/9/2008
112 PEST CONTROL	208-454-7507	8/13/2008
775 COLLEGE OF WESTERN IDAHO	208-562-3299	Budget Hearin
120 INTERIM MOSQUITO ABATEMENT	208-454-7507	8/13/2008

**THIS IS NOT A BILL. DO NOT PAY.**

See the back of this Notice for details

**000065**

0060482



**CANYON COUNTY CONSOLIDATED PROPERTY TAX BILL**  
**TRACIE LLOYD**  
 1115 Albany St., Room 342  
 Caldwell, Idaho 83605  
 (208)454-7354

CANYON COUNTY TREASURER & TAX COLLECTOR  
 FOR TAXING DISTRICTS OF CANYON COUNTY

**2008 REAL PROPERTY  
 REGULAR TAX ROLL**

**DUE DATE:  
 DECEMBER 20, 2008**

<b>PIN:</b>	70473000 0
<b>BILL NUMBER:</b>	2008153769
<b>Property Description:</b>	<b>Code Area:</b> 049-00
19-6N-5W SE R39350000 0 1972 BROADMORE 24X60 VIN 24ES3803 TITLE C531744	
<b>Property Address:</b> 29452 PEARL RD	

DEC08

WILFRIDO CUEVAS  
 29452 PEARL RD  
 PARMA ID 83660

LAND VALUE	0
IMPROVEMENT VALUE	12,700
HOMEOWNERS EXEMPTION	6,350
<b>Total Taxable</b>	<b>6,350</b>

**DELINQUENCIES:**

THIS IS A LISTING OF THE TOTAL AMOUNT YOU PAY EACH TAXING DISTRICT, INCLUDING BONDS, OVERRIDES AND CERTIFICATIONS IF APPLICABLE. CONTACT THE AGENCY LISTED BELOW WITH QUESTIONS REGARDING THE TAXING DISTRICT AND THE CHARGED AMOUNT.

112 PEST	0.0000512920	0.32
120 INTERIM MOSQ	0.0000376530	0.24
653 AMBULANCE DI	0.0001726090	1.10
693 HWY 2	0.0015405710	9.78
715 PARMA FIRE	0.0010936970	6.94
736 PARMA CEMETE	0.0001532190	0.96
768 PARMA SCHL 1	0.0052735690	33.50
775 COLLEGE OF W	0.0001123950	0.72
998 CANYON COUNT	0.0038585020	24.52
ADVANCE PAYMENTS PRIOR TO 11/01/2008: STATE APPROVED PROPERTY TAX REDUCTION:		
<b>TOTAL TAXES DUE:</b>		<b>78.08</b>

IF YOU HAVE SOLD THIS PROPERTY OR A MORTGAGE COMPANY IS RESPONSIBLE FOR PAYING THIS TAX, PLEASE FORWARD THIS BILL IMMEDIATELY.
<b>QUESTIONS ABOUT YOUR ASSESSED VALUE? CALL THE ASSESSOR AT (208) 454-7431</b>
IF ANY PORTION OF THE TAX BECOMES DELINQUENT A 2% LATE CHARGE WILL BE APPLIED. INTEREST ON THE DELINQUENT BALANCE WILL ACCRUE AT 1% PER MONTH, DATING FROM JANUARY 1ST. WHEN PAYING DELINQUENT BALANCES, PLEASE CALL (208)454-7354 FOR THE CORRECT AMOUNT DUE INCLUDING LATE CHARGE AND INTEREST
<b>MONTHLY PAYMENTS ARE ACCEPTED</b>
<b>***IMPORTANT***</b>
<b>PLEASE READ BOTH FRONT AND BACK OF THIS NOTICE</b>
TO AVOID LATE CHARGE & INTEREST, THE FULL AMOUNT OR FIRST HALF TAX MUST BE PAID IN PERSON OR HAVE A U.S. POSTMARK NO LATER THAN <b>DECEMBER 20, 2008</b>
Credit Card payments are accepted via the Internet at <a href="http://www.canyonco.org/treasurer.aspx">www.canyonco.org/treasurer.aspx</a> or can be accepted in person at the office. A nominal fee is charged by the processor for this service.

000066



**CANYON COUNTY CONSOLIDATED PROPERTY TAX BILL**  
**TRACIE LLOYD**  
 1115 Albany St., Room 342  
 Caldwell, Idaho 83605  
 (208)454-7354

CANYON COUNTY TREASURER & TAX COLLECTOR  
 FOR TAXING DISTRICTS OF CANYON COUNTY

**2008 REAL PROPERTY  
 REGULAR TAX ROLL**

**DUE DATE:  
 DECEMBER 20, 2008**

<b>PIN:</b>	39350000 0
<b>BILL NUMBER:</b>	2008153501
<b>Property Description:</b>	<b>Code Area:</b> 049-00 19-6N-5W SE TAX 2-B IN SWSE T70473
<b>Property Address:</b> 29452 PEARL RD PA ID	

24038 39350000 0 \*\*\*\*\*5-DIGIT 83660 DECOB



WILFRIDO CUEVAS  
 29452 PEARL RD  
 PARMA ID 83660-6338

LAND VALUE	55,560
IMPROVEMENT VALUE	7,100
HOMEOWNERS EXEMPTION	15,000
<b>Total Taxable</b>	<b>47,660</b>

**DELINQUENCIES:**

THIS IS A LISTING OF THE TOTAL AMOUNT YOU PAY EACH TAXING DISTRICT, INCLUDING BONDS, OVERRIDES AND CERTIFICATIONS IF APPLICABLE. CONTACT THE AGENCY LISTED BELOW WITH QUESTIONS REGARDING THE TAXING DISTRICT AND THE CHARGED AMOUNT.

112 PEST	0.0000512920	2.44
120 INTERIM MOSQ	0.0000376530	1.80
653 AMBULANCE DI	0.0001726090	8.24
693 HWY 2	0.0015405710	73.42
715 PARMA FIRE	0.0010936970	52.12
736 PARMA CEMETE	0.0001532190	7.30
768 PARMA SCHL 1	0.0052735690	251.34
775 COLLEGE OF W	0.0001123950	5.38
998 CANYON COUNT	0.0038585020	183.88
786 DRAIN #3		14.88
ADVANCE PAYMENTS PRIOR TO 11/01/2008: STATE APPROVED PROPERTY TAX REDUCTION:		
<b>TOTAL TAXES DUE:</b>		<b>600.88</b>

IF YOU HAVE SOLD THIS PROPERTY OR A MORTGAGE COMPANY IS RESPONSIBLE FOR PAYING THIS TAX, PLEASE FORWARD THIS BILL IMMEDIATELY.
<b>QUESTIONS ABOUT YOUR ASSESSED        VALUE? CALL THE ASSESSOR AT        (208) 454-7431.</b>
IF ANY PORTION OF THE TAX BECOMES DELINQUENT A 2% LATE CHARGE WILL BE APPLIED. INTEREST ON THE DELINQUENT BALANCE WILL ACCRUE AT 1% PER MONTH, DATING FROM JANUARY 1ST. WHEN PAYING DELINQUENT BALANCES, PLEASE CALL (208)454-7354 FOR THE CORRECT AMOUNT DUE INCLUDING LATE CHARGE AND INTEREST!
<b>MONTHLY PAYMENTS ARE ACCEPTED</b>
<b>***IMPORTANT***</b>
<b>PLEASE READ BOTH FRONT AND BACK OF        THIS NOTICE</b>
TO AVOID LATE CHARGE & INTEREST, THE FULL AMOUNT OR FIRST HALF TAX MUST BE PAID IN PERSON OR HAVE A U.S. POSTMARK NO LATER THAN <b>DECEMBER 20, 2008</b>
Credit Card payments are accepted via the Internet at <a href="http://www.canyonco.org/treasurer/asp">www.canyonco.org/treasurer/asp</a> or can be accepted in person at the office. A nominal fee is charged by the processor for this service.

000067

Received By:

Cashier5

Receipt Number:

U08.519

Location:

COUNTY

Receipt Year:

200

Session:

Cashier5-Cashier5-12192008-0

Date Received:

12/19/200

## PAYMENT RECEIPT

Type	Description	Balance	Net Tax	Interest	Fees/Late Charges	Current Due	Current Paid	Balance Remaining
Personal Property	Bill Number: 2008300635 Bill Year: 2008 PIN: 64936614 0 Primary Owner: WC STUCCO COMPANY Property Addr: 29452 PEARL RD	24.30	24.30	0.00	0.00	24.30	24.30	0.00
Real Property	Bill Number: 2008153769 Bill Year: 2008 PIN: 70473000 0 AIN: 6N5W192MH7 Primary Owner: WILFRIDO CUEVAS Property Addr: 29452 PEARL RD Property Desc: 19-6N-5W SE R39350000 0 1972 BROADMORE 24X	78.08	78.08	0.00	0.00	78.08	78.08	0.00
Real Property	Bill Number: 2008153501 Bill Year: 2008 PIN: 39350000 0 AIN: 06N05W198800 Primary Owner: WILFRIDO CUEVAS Property Addr: 29452 PEARL RD PA ID Property Desc: 19-6N-5W SE TAX 2-B IN SWSE T70473	600.88	300.44	0.00	0.00	300.44	300.44	300.44
<b>Totals:</b>		703.26	402.82	0.00	0.00	402.82	402.82	300.44
<b>Tender Information:</b>		<b>Charge Summary:</b>						
Cash		410.00	Personal Property					24.30
			Real Property					378.52
Total Tendered		410.00	Total Charges					402.82

Canyon

By Whom Paid:

AMY CUEVAS 405-9616  
812067  
29452 PEARL RD  
PARMA ID 83660

CHARGES	402.82
PAID	402.82
BALANCE REMAINING	300.44
AMOUNT TENDERED	410.00
CHANGE	7.18

000068

# **EXHIBIT C**

**000069**

WELLS FARGO BANK  
Transaction Record

Store # 04055 05

Deposit

Account Number

038

Cash In

\$1,000.00

Total Deposited

\$1,000.00

Less Cash

\$0.00

Net Deposit Amount

\$1,000.00

Transaction # 087 0089

12:02pm 12/20/03 Credited: 12/22/03

Thank you, SanJuanita

WELLS FARGO BANK  
Transaction Record

Store # 04055 11

Deposit

Account Number

038

Cash In

\$1,000.00

Total Deposited

\$1,000.00

Less Cash

\$0.00

Net Deposit Amount

\$1,000.00

Transaction # 025 0029

5:14pm 10/24/03 Credited: 10/24/03

Thank you, Jill

# WESTERN UNION

www.westernunion.com

Por favor escriba

Order No.

Preferido

Money to / Para enviar dinero a:

☐ International (excludes Mexico) / Internacionales (No incluye a Mexico)

Dollar amount in words\* / Cantidad de dólares con letra\*

Five Hundred dollars

Dollar amount\* / Cantidad en dólares\*

\$500.00

When sending \$1,000 or more, you must provide proper identification and additional information.  
Al enviar \$1,000 ó más, usted deberá presentar una identificación e información adicional.

Receiver

Destinatario

First name / Nombre

Paternal last name / Apellido paterno

Maternal name / Apellido Materno

Sender's name

Nombre del remitente

Sender's telephone

Teléfono del remitente

Sender's address

Dirección del remitente

City / Ciudad

State / Estado

Zip / Código postal

Expected payout location

Localidad donde se esperará el pago

City / Ciudad

State / Estado

Country / País

If sending less than \$1,000 and the receiver does not have valid identification, complete the Test question and answer. (The maximum amount that can be picked up without I.D. is \$999.99.)

Si el envío es menos de \$1,000 y el destinatario no cuenta con una identificación válida, favor de anotar la pregunta de comprobación y la respuesta. (La cantidad máxima que el destinatario puede recoger sin presentar identificación es de \$999.99.)

Test question (limit 4 words) / Pregunta de Comprobación (límite 4 palabras):

Question / Pregunta

Answer / Respuesta

Optional services available at additional cost. Check services desired:

Opciones de servicios disponibles por un costo adicional. Marque el servicio que desee:

☐ Include this message

Envíe esta mensaje con dinero.

☐ I want a check delivered to the

following address (selected

International locations only):

Deseo que un cheque sea entregado a la siguiente dirección (solamente en selectas localidades internacionales)

Deseo que Western Union llame por teléfono al destinatario

☐ I want Western Union to

telephone the receiver

CERTAIN TERMS AND CONDITIONS GOVERNING THE MONEY TRANSFER SERVICE YOU HAVE SELECTED ARE SET FORTH ON THE BACK OF THIS FORM. BY SIGNING THIS FORM, YOU ARE AGREEING TO THOSE TERMS AND CONDITIONS.

\*PLEASE SEE IMPORTANT INFORMATION REGARDING CURRENCY EXCHANGE SET FORTH ON THE BACK OF THIS FORM.

ALGUNOS TÉRMINOS Y CONDICIONES QUE RIGEN EL SERVICIO DE TRANSFERENCIA DE DINERO QUE USTED HA ELEGIDO, ESTÁN ESPECIFICADOS EN EL REVERSO DE ESTE FORMULARIO. AL FIRMARLO, USTED ESTÁ DE ACUERDO CON ESOS TÉRMINOS Y CONDICIONES.

\*POR FAVOR LEA LA INFORMACIÓN IMPORTANTE SOBRE CAMBIO DE MONEDA ESPECIFICADA EN EL REVERSO DE ESTE FORMULARIO.

Customer's signature

Do not write in shaded area

No escriba en el área sombreada

Operator number

Número de operador

Date

Fecha

Sent time

Hora de envío

I.D. type

Tipo de identificación

Number

Número

Date of birth

Fecha de nacimiento

Occupation

Ocupación

Social Security No / Número de Seguro Social

Money Transfer Control Number

Número de control de transferencia

Amount

Cantidad

\$

500.00

Charge

Cargo

\$

44.00

Telephone or delivery charge

Cargo por teléfono o entrega

Message charge

Cargo por mensaje

\$

0.00

Tax

Impuesto

\$

0.00

Total amount collected

Cantidad total cobrada

\$

544.00

Rate of exchange\*

Tipo de cambio\*

Amount to be paid\*

Cantidad a pagar\*

0000071



Preferred Customer No.  
Número de Cliente Preferido

Sending Money to / Para enviar dinero a:

☐ USA ☐ International (excludes Mexico) / Internacionales (No incluye a Mexico)

Dollar amount in words\* / Cantidad de dólares con letra\*

Dollar amount\* / Cantidad en dólares\*

\$500

When sending \$1,000 or more, you must provide proper identification and additional information.

Al enviar \$1,000 ó más, usted deberá presentar una identificación e información adicional.

Receiver  
Destinatario  
First name / Nombre  
Last name / Apellido paterno  
Maternal name / Apellido Materno

Sender's name  
Nombre del remitente  
First name / Nombre  
Last name / Apellido

Sender's telephone  
Teléfono del remitente

Sender's address  
Dirección del remitente  
Street / Calle y número  
City / Ciudad  
State / Estado  
Zip / Código postal

Selected payout location  
Lugar donde se esperará el pago  
City / Ciudad  
State / Estado  
Country / País

When sending less than \$1,000 and the receiver does not have valid identification, complete the Test question and answer. (The maximum amount that can be picked up without I.D. is \$999.99.)

When sending less than \$1,000 and the receiver does not have valid identification, complete the Test question and answer. (The maximum amount that can be picked up without I.D. is \$999.99.)

Test question (limit 4 words) / Pregunta de Comprobación (límite 4 palabras):

Test answer (limit 4 words) / Respuesta

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Additional services available at additional cost. Check services desired:

Do not write in shaded area  
No escriba en el área oscura

Operator number  
Número de operador

Date  
Fecha

I.D. type  
Tipo de identificación

Date of birth  
Fecha de nacimiento

Occupation  
Ocupación

Social Security No. / Número de Seguro Social

Money Transfer Control Number  
Número de control de transferencia

Amount  
Cantidad

\$500.00

Charge  
Cargo

\$44.00

Telephone or delivery charge

Message charge

Total amount collected  
Monto total cobrado

\$544.00

THIS

DOS

WELLS FARGO BANK  
Transaction Record

WELLS FARGO BANK  
Transaction Record

WELLS FARGO BANK  
Transaction Record

WELLS FARGO BANK  
Transaction Record

3

Deposit

Store # 04055 04

Deposit

Store # 04055 01

Deposit

Store # 04055 02

Deposit

Account Number

038

Cash In

Total Deposited

Less Cash

Net Deposit Amount

\$800.00

\$800.00

\$0.00

\$800.00

\$850.00

\$850.00

\$0.00

\$850.00

Account Number

038

Cash In

Total Deposited

Less Cash

Net Deposit Amount

\$800.00

\$800.00

\$0.00

\$800.00

Account Number

038

Cash In

Total Deposited

Less Cash

Net Deposit Amount

\$800.00

\$800.00

\$0.00

\$800.00

Transaction # 006 0008

9:41am 03/20/04 Credited: 03/22/04

Transaction # 007 0009

10:05am 01/24/04 Credited: 01/26/04

Thank you, Sonia

Thank you, Crais

55 0061

7/04 Credited: 05/17/04

Transaction # 009 0011

9:46am 04/03/04 Credited: 04/05/04

Thank you, Christina

000073

WELLS FARGO BANK  
Transaction Record

WELLS FARGO BANK  
Transaction Record

Store # 05994 02  
Account Number [REDACTED]  
038  
Cash In \$800.00  
Total Deposited \$800.00  
Less Cash \$0.00  
Net Deposit Amount \$800.00  
Transaction # 055 0065  
4:04pm 06/21/04 Credited: 06/21/04

Store # 033 0037  
07/19/04 Credited: 07/19/04

Tanya

Thank you, Marci

WELLS FARGO BANK  
Transaction Record

Store # 05994 03  
Account Number [REDACTED]  
038  
Cash In \$800.00  
Total Deposited \$800.00  
Less Cash \$0.00  
Net Deposit Amount \$800.00  
Transaction # 055 0081  
1:41pm 05/17/04 Credited: 05/17/04

Transaction # 055 0081  
1:41pm 05/17/04 Credited: 05/17/04

Thank you, Tanya

Juan Cuevas

WELLS FARGO BANK  
Transaction Record

WELLS FARGO BANK  
Transaction Record

Store # 05994 03                      Deposit

Account Number                      [REDACTED]

038

Cash In                                      \$700.00

Total Deposited                      \$700.00

Less Cash                                      \$0.00

Net Deposit Amount                      \$700.00

Transaction # 033 0037  
11:46am    07/19/04    Credited: 07/19/04

Thank you, Tanya

Store # 05994 02

Deposit

Account Number                      [REDACTED]

038

Cash In                                      \$800.00

Total Deposited                      \$800.00

Less Cash                                      \$0.00

Net Deposit Amount                      \$800.00

Transaction # 055 0065  
4:04pm    06/21/04    Credited: 06/21/04

Thank you, Marci

WELLS FARGO BANK  
Transaction Record

Store # 05994 03                      Deposit

Account Number                      [REDACTED]

038

Cash In                                      \$800.00

Total Deposited                      \$800.00

Less Cash                                      \$0.00

Net Deposit Amount                      \$800.00

Transaction # 055 0061  
1:41pm    05/17/04    Credited: 05/17/04

Thank you, Tanya

Juan Cuevas

000075

WELLS FARGO BANK  
Transaction Record

Store # 04055 02                      Deposit

Account Number                      [REDACTED]

038

Cash In                      \$500.00

Total Deposited                      \$500.00

Less Cash                      \$0.00

Net Deposit Amount                      \$500.00

Transaction # 124 0143  
3:42pm      09/20/04      Credited: 09/20/04

Team Up for Our Schools. Ask me how.

Thank you, Crais

WELLS FARGO BANK  
Transaction Record

Store # 05994 03                      Deposit

Account Number                      [REDACTED]

038

Cash In                      \$300.00

Total Deposited                      \$300.00

Less Cash                      \$0.00

Net Deposit Amount                      \$300.00

Transaction # 006 0008  
10:57am      09/09/04      Credited: 09/09/04

Team Up for Our Schools. Ask me how.

Thank you, Tanya

10030  
5:015  
WELLS FARGO BANK  
Transaction Record

Store # 05994 01                      Deposit

Account Number                      [REDACTED]

038

Cash In                      \$930.00

Total Deposited                      \$930.00

Less Cash                      \$0.00

Net Deposit Amount                      \$930.00

Transaction # 013 0016  
10:19am      08/16/04      Credited: 08/16/04

Thank you, DEANA

000076

Wells Fargo Bank  
Transaction Record

STORE # 05994 01

Deposit

Account Number XXXX-XX5016  
00038  
Cash In ~~XXXX~~ \$800.00  
Number of checks ~~XXXX~~ 0  
Total Deposited \$800.00  
Less Cash - \$0.00  
Net Deposit Amount \$800.00

Transaction # 014 0016  
11:43AM 12/20/04 Credited: 12/20/04

Thank you, Shannon

WELLS FARGO BANK  
Transaction Record

Store # 05994 02

Deposit

Account Number ~~XXXX~~  
038  
Cash In ~~XXXX~~ \$800.00  
Total Deposited \$800.00  
Less Cash ~~XXXX~~ \$0.00  
Net Deposit Amount \$800.00

Transaction # 023 0026  
1:20pm 11/22/04 Credited: 11/22/04

Thank you, Marcel

WELLS FARGO BANK  
Transaction Record

Store # 04055 04

Deposit

Account Number ~~XXXX~~  
038  
Cash In ~~XXXX~~ \$800.00  
Total Deposited \$800.00  
Less Cash ~~XXXX~~ \$0.00  
Net Deposit Amount \$800.00

Transaction # 144 0167  
3:49pm 10/21/04 Credited: 10/21/04

Team Up for Our Schools. Ask me how.

Thank you, Christina

000077

Wells Fargo Bank  
Transaction Record

STORE # 04055 06

Deposit

Account Number ~~XXXX-XX5016~~  
00038  
Cash In \$800.00  
Number of checks 0  
  
Total Deposited \$800.00  
Less Cash - \$0.00  
Net Deposit Amount \$800.00

Transaction # 009 0011  
10:18AM 02/19/05 Credited: 02/22/05

Thank you, SanTharita

Wells Fargo Bank  
Transaction Record

STORE # 05994 03

Deposit

Account Number ~~XXXX-XX5016~~  
00038  
Cash In \$800.00  
Number of checks 0  
  
Total Deposited \$800.00  
Less Cash - \$0.00  
Net Deposit Amount \$800.00

Transaction # 066 0079  
12:11PM 01/17/06 Credited: 01/17/06

Thank you, Jennifer

Wells Fargo Bank  
Transaction Record

STORE # 04055 01

Deposit

Account Number ~~XXXX-XX5016~~  
00038  
Cash In \$800.00  
Number of checks 0  
  
Total Deposited \$800.00  
Less Cash - \$0.00  
Net Deposit Amount \$800.00

Transaction # 231 0251  
05:21PM 01/14/05 Credited: 01/14/05

Thank you, Sonia

820000  
000078

Wells Fargo Bank  
Transaction Record

STORE # 05994 03

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$800.00
Number of checks	0
Total Deposited	\$800.00
Less Cash	- \$0.00
Net Deposit Amount	\$800.00

Transaction # 008 0017  
09:44AM 05/25/05 Credited: 05/25/05

Thank you, Tanya

Wells Fargo Bank  
Transaction Record

STORE # 04055 06

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$800.00
Number of checks	0
Total Deposited	\$800.00
Less Cash	- \$0.00
Net Deposit Amount	\$800.00

Transaction # 055 0061  
01:45PM 04/16/05 Credited: 04/18/05

Thank you, SanJuanita

Wells Fargo Bank  
Transaction Record

STORE # 04055 01

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$800.00
Number of checks	0
Total Deposited	\$800.00
Less Cash	- \$0.00
Net Deposit Amount	\$800.00

Transaction # 032 0035  
10:59AM 03/19/05 Credited: 03/21/05

Thank you, Sonia

0000079



Wells Fargo Bank  
Transaction Record

STORE # 04055 05

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$800.00
Number of checks	0
Total Deposited	\$800.00
Less Cash	- \$0.00
Net Deposit Amount	\$800.00

Transaction # 125 0145  
03:59PM 08/19/05 Credited: 08/19/05

Thank you, Paula

Wells Fargo Bank  
Transaction Record

STORE # 04055 02

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$800.00
Number of checks	0
Total Deposited	\$800.00
Less Cash	- \$0.00
Net Deposit Amount	\$800.00

Transaction # 031 0033  
11:30AM 07/23/05 Credited: 07/25/05

Thank you, Sarah

Wells Fargo Bank  
Transaction Record

STORE # 05994 03

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$800.00
Number of checks	0
Total Deposited	\$800.00
Less Cash	- \$0.00
Net Deposit Amount	\$800.00

Transaction # 019 0022  
04:31PM 06/24/05 Credited: 06/24/05

Thank you, DEANA

080000

Wells Fargo Bank  
Transaction Record

STORE # 05994 03 Deposit



Account Number XXXX-XX5016  
00038  
Cash In \$100.00  
Number of checks 0  
Total Deposited \$100.00  
Less Cash - \$0.00  
Net Deposit Amount \$100.00

Transaction # 039 0044  
10:27AM 11/14/05 Credited: 11/14/05

Thank you, Jennifer

  
Bank of America  
  
Bank of America

Welcome to Bank of America  
Bank with the people you have come  
to know and depend on.

  
TOTAL DEPOSITED to  
Checking #   
Bank of America  
Arizona  
Ref # 274108243 \$800.00  
Cash Deposited \$800.00

Thank You,  
Kimberly  
NANPA  
10/12/2005

Wells Fargo Bank  
Transaction Record

STORE # 05994 03 Deposit

Account Number XXXX-XX5016  
00038  
Cash In \$800.00  
Number of checks 0  
Total Deposited \$800.00  
Less Cash - \$0.00  
Net Deposit Amount \$800.00

Transaction # 030 0035  
12:04PM 09/19/05 Credited: 09/19/05

Thank you, Jennifer

280000

**Bank of America**

Welcome to Bank of America  
 2010-10-10 10:10 AM  
 10/10/2010

TOTAL DEPOSITED to  
 Checking [REDACTED]  
 Bank of America  
 Arizona  
 Ref # 274107132 \$3,500.00  
 Cash Deposited \$3,500.00

Thank You,  
 Angela  
 NAMPA  
 12/11/2006

### Wells Fargo Bank Transaction Record

STORE # 05994 03 Deposit

Account Number XXXX-XX5016  
 00038  
 Cash In \$800.00  
 Number of checks 0  
 Total Deposited \$800.00  
 Less Cash - \$0.00  
 Net Deposit Amount \$800.00

Transaction # 027 0033  
 12:51PM 12/15/05 Credited: 12/15/05

Thank you, Jennifer

### Wells Fargo Bank Transaction Record

STORE # 05994 03 Deposit

Account Number XXXX-XX5016  
 00038  
 Cash In \$800.00  
 Number of checks 0  
 Total Deposited \$800.00  
 Less Cash - \$0.00  
 Net Deposit Amount \$800.00

Transaction # 038 0043  
 10:26AM 11/14/05 Credited: 11/14/05

Thank you, Jennifer

Ban



Bank of America



Welcome to Bank of America  
Bank with the people you have come  
to know and depend on.

**TOTAL DEPOSITED to**

Checking # [REDACTED]  
Bank of America  
Arizona  
Ref # 274106024      \$2,000.00  
  
Cash Deposited      \$2,000.00

Thank You,  
Melissa  
NAMP  
12/27/2006

**Wells Fargo Bank  
Transaction Record**

STORE # 05994 01

Deposit

Account Number	XXXX-XX5016
00038	
Cash In	\$3,500.00
Number of checks	0
Total Deposited	\$3,500.00
Less Cash	- \$0.00
Net Deposit Amount	\$3,500.00

Transaction # 025 0027

10:22AM 12/11/06 Credited: 12/11/06

you, Shannon

000083

# **EXHIBIT D**

000084

INSTRUMENT NO. 2007043067

QUITCLAIM DEED

FOR VALUE RECEIVED: Thirty Five Thousand dollars (\$35,000.00)

JUAN M CUEVAS AND YRENE BAEZ

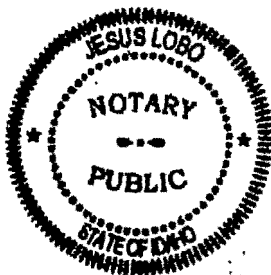
Whose address is: 5019 W EDGE MONT AVE PHOENIX, AZ 85035

Hereinafter called the first party, do hereby convey, release, remise and forever  
QUITCLAIM unto second party: WILFRIDO CUEVAS

The following described premises to-wit:

Parcel no. 06n05w198800  
19 6N-5W SE  
TAX 2-B IN SWSE.  
SEE ATTACHED

Dated: 06/13/2007



JUAN M. CUEVAS  
Juan M Cuevas

YRENE BAEZ  
Yrene Baez

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the  
day and year first above written.

State of IDAHO )

:ss

County of Canyon )

On this 13th day of June, 2007 before me, Jesus Lobo, a Notary Public in and for the  
State of Idaho, personally appeared, Juan M Cuevas and Yrene Baez known to me to be the  
persons whose names are subscribed to the within instrument and acknowledged to me that they  
executed the same.

WITNESS my hand and official seal.

Jesus Lobo  
Notary Public for Idaho

My commission expires: 04-19-2012

RECORDED

2007 JUN 20 PM 12 50

WILLIAM H. HURST  
CANYON CNTY RECORDER  
BY William H. Hurst

2007043067

REQUEST Will Lobo  
TYPE Notary Seal

980000

NUMBER

DESCRIPTION

ix 2-B

A part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 19, Township 6 North, Range 5 West of the Boise Meridian, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 19, township 6 North, Range 5 West of the Boise Meridian, the Initial Point of this description; thence North  $0^{\circ}07'$  East 924 feet, along the West line of the Said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; thence South  $55^{\circ}15'$  East 336.82 feet; thence South  $0^{\circ}07'$  West 730 feet, parallel, to the said West line to appoint on the South line of the Said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ ; thence South  $89^{\circ}35'$  West 277.15 feet, along the said South line to the Initial Point of this description.

**F I L E D**  
A.M. 3:63 P.M.

**SEP 21 2009**

**CANYON COUNTY CLERK  
K CANNON, DEPUTY**

Mark C. Peterson, ISB No. 6477  
Rebecca A. Rainey, ISB No. 7525  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 South Capitol Boulevard, 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
mcp@moffatt.com  
rar@moffatt.com  
24163.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any); LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED IN  
EXHIBIT "A", COMMONLY KNOWN AS  
29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**



## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND.....	2
III. LEGAL AUTHORITY.....	6
IV. ARGUMENT.....	7
A. The Judgment Entered in Canyon County Case No. CV-07-3536 Is Void and Subject to Collateral Attack. ....	7
1. The judgment entered is void because it exceeded the Court's authority by granting relief not requested in the pleadings on file. ....	8
2. The judgment entered is void because the Court did not have personal jurisdiction over Juan Cuevas regarding Barraza's proposed counterclaims.....	10
B. <i>Res Judicata</i> Does Not Bar Wilfrido Cuevas from Asserting His Interest in the Property.....	13
C. Wilfrido Cuevas' Interest in the Property is Superior to Defendants. ....	17
V. CONCLUSION .....	19

## TABLE OF CASES AND AUTHORITIES

### Cases

<i>Brown v. Caldwell Sch. Dist. No. 132</i> , 127 Idaho 112, 898 P.2d 43 (1995).....	6
<i>Burnham v. Superior Court of Cal.</i> , 495 U.S. 604 (1990).....	7
<i>Burns v. Baldwin</i> , 138 Idaho 480, 65 P.3d 502 (2003).....	7
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548 (1986).....	7
<i>Hartman v. United Heritage Prop. &amp; Cas. Co.</i> , 141 Idaho 193, 108 P.3d 340 (2005).....	7
<i>Martin v. Soden</i> , 81 Idaho 274, 340 P.2d 848 (1959).....	7, 8, 9
<i>Maxwell v. Twin Falls Canal Co.</i> , 49 Idaho 806, 292 P. 232 (1930).....	15, 18
<i>McGilvray v. Farmers New World Life Ins. Co.</i> , 136 Idaho 39, 28 P.3d 380 (2001).....	6
<i>McGrew v. McGrew</i> , 139 Idaho 551, 82 P.3d 833 (2003).....	7
<i>Roberts v. Friedell</i> , 218 Minn. 88, 15 N.W.2d 496 (1944).....	14
<i>Sartain v. Fidelity Fin. Servs., Inc.</i> , 116 Idaho 269, 775 P.2d 161 (1989).....	14
<i>Smith v. Kessler</i> , 22 Idaho 589, 127 P. 172 (1912).....	14
<i>Sparks v. St. Luke's Reg'l Med. Ctr., Ltd.</i> , 115 Idaho 505, 768 P.2d 768 (1988).....	7
<i>Ticor Title Co. v. Stanion</i> , 144 Idaho 119, 157 P.3d 613 (2007).....	13, 14

<i>Viafax Corp. v. Stuckenbrock</i> , 134 Idaho 65, 995 P.2d 835 (Ct. App. 2000).....	9, 10, 11, 12, 13
--	-------------------

<i>Waller v. Dep't of Health &amp; Welfare</i> , 146 Idaho 234, 192 P.3d 1058 (2008).....	14
--	----

## Statutes

I.R.C.P. 11.....	5
------------------	---

I.R.C.P. 4.....	5, 12, 13
-----------------	-----------

I.R.C.P. 5.....	5, 11, 12, 13
-----------------	---------------

I.R.C.P. 56.....	6
------------------	---

I.R.C.P. 60.....	11, 13
------------------	--------

I.R.E. 201 .....	2
------------------	---

IDAHO CODE § 55-812.....	17
--------------------------	----

## Other Authorities

24 Am. & Eng. Ency. of Law (2d ed.).....	14
--	----

30A AM. JUR. <i>Judgments</i> § 45 .....	7
--	---

54 C.J.S. <i>Lis Pendens</i> § 35 (1987).....	14
---	----

## I. INTRODUCTION

Nearly six years ago, plaintiff Wilfrido Cuevas began purchasing the property commonly known as 29452 Pearl Road, Parma, Idaho (the "Property") from his nephew, Juan Cuevas and Juan Cuevas' wife, Yrene Baez. Wilfrido Cuevas' purchase of the Property came after the failed attempt by Juan Cuevas to sell the Property to defendants herein, Bernardino Barraza and Liobaldo Garza. In order to allow for Wilfrido Cuevas to purchase the Property, the contract between Juan and Barraza was rescinded, with the promise of Juan Cuevas to repay Barraza \$20,000 of Barraza's down payment. Wilfrido Cuevas began making payments to Juan Cuevas for the purchase of the Property, moved onto the Property, began making improvements to the Property and began paying property taxes on the Property.

A dispute arose between Juan Cuevas and Barraza regarding the repayment of the \$20,000 promised as consideration for Barraza to rescind the contract. Barraza filed an unauthorized lien against the Property attempting to secure his interest in the \$20,000. Barraza took no other legal action to enforce his rights to the \$20,000 and, in 2006, Juan Cuevas filed suit to remove the cloud on title cast by Barraza's improperly filed lien. Though Wilfrido Cuevas had been in the process of purchasing the Property from Juan Cuevas since 2003, Wilfrido Cuevas was never named in the prior lawsuit.

Through a series of procedural irregularities that went unchecked by the court, the ultimate resolution of the prior action was a judgment and order quieting title in favor of Barraza, though (i) Barraza never filed any pleadings seeking such relief from the court, (ii) Barraza never served pleadings seeking such relief upon either Juan Cuevas or his attorney of record, (iii) Barraza never proffered any documents containing or alleging facts that would support his claims to fee ownership of the Property, and (iv) Wilfrido Cuevas, who held an interest in the

Property as the vendee under a land sales contract since 2003, was never named in the prior litigation.

The matter before this Court involves both a collateral attack on a judgment improperly quieting title to the Property and an independent action asserting the superior rights of the record owner of such Property. Both theories provided an independent, stand alone basis for this Court to consider the merits of the issue before it - the true ownership of the Property - and give this Court jurisdiction and authority to enter a judgment and order quieting title to the Property in favor of the rightful owner, Wilfrido Cuevas. Because there are no disputed issues of material fact, Wilfrido Cuevas respectfully requests that this Court enter summary judgment quieting title to the Property in his favor.

## **II. FACTUAL BACKGROUND**

1. On or about March 6, 2001, Juan Cuevas and Yrene Baez entered into a contract to sell the Property to Bernardino Barraza and Liobaldo Garza for Eighty Thousand and No/100 Dollars (\$80,000.00). Appendix C (Answer and Counterclaim at 4, ¶ IV).<sup>1</sup>

2. Such contract was thereafter rescinded when Juan Cuevas and Yrene Baez promised to reimburse Barraza \$20,000.00 if defendant vacated the Property. Appendix C (Answer and Counterclaim at 4, ¶ VIII, and 6, ¶ XVII).

3. On April 1, 2002, Bernardino Barraza and Liobaldo Garza filed a "Claim of Lien" on the Property for "unpaid refund in the amount \$20,000.00 for the payments on Real

---

<sup>1</sup> Pursuant to Idaho Rule of Evidence 201(d), upon written request of a party, the Court must take judicial notice of records from the court file in a separate case. The documents attached hereto as Appendices A-E comprise the register of action and relevant portions of the record in Canyon County Case No. CV-07-3536, and by proffering such records to the Court and serving the same on all parties, plaintiff respectfully requests that this Court take judicial notice of such records and their contents.

Estate Title.” Such Claim of Lien is on file in the land records of Canyon County as Recorder’s Instrument Nos. 200220593, 200666034 and 2007007336. Affidavit of Rebecca A. Rainey in Support of Plaintiff’s Motion for Summary Judgment (“Rainey Aff.”), Exhibit A.

4. In August 2003, Wilfrido Cuevas began purchasing the Property from Juan Cuevas and Yrene Baez under an oral contract. Affidavit of Wilfrido Cuevas in Support of Plaintiff’s Motion for Summary Judgment (“Cuevas Aff.”), ¶ 2.

5. At such time Wilfrido Cuevas moved onto the Property, began making payments to Juan Cuevas, began making improvements on the Property, and began paying property taxes on the Property. Cuevas Aff., ¶¶ 2, 3, A<sic>, and 4.

6. On April 2, 2007, Juan Cuevas and Yrene Baez filed a Complaint to Quiet Title and for Damages against Bernardino Barraza and Liobaldo Garza as Case No. CV-07-3536 seeking to remove the cloud on title created by the “Claim of Lien” described in paragraph 3, above. Appendix B (Complaint).

7. Bernardino Barraza and Liobaldo Garza failed to answer said Complaint to Quiet Title and for Damages and an order for entry of default and default judgment were entered against Barraza and Garza on May 15, 2007. Appendix A (Register of Action in Case No. CV-07-3536 (hereafter “ROA”)).

8. On May 11, 2007, the judgment quieting title in favor of Juan Cuevas and Yrene Baez was filed in the land records of Canyon County as Recorder’s Instrument No. 2007033985. Rainey Aff., Exhibit B.

9. On May 24, 2007, Barraza filed a motion to set aside default and an affidavit of counsel supporting such motion. Attached to the affidavit of counsel was the answer

and counterclaim for purposes of demonstrating that Barraza had a meritorious defense to the action and judgment sought to be set aside. Appendix C.

10. On or about June 13, 2007, Wilfrido Cuevas paid the remaining balance of the purchase price to Juan Cuevas and Yrene Baez and Juan Cuevas and Yrene Baez executed a quitclaim deed transferring all of their right, title and interest in the Property to Wilfrido Cuevas. Cuevas Aff., ¶ 6. Wilfrido Cuevas caused the quitclaim deed to be filed in the land records of Canyon County as Recorder's Instrument No. 2007043067 on June 20, 2007. Cuevas Aff., Exhibit D; Rainey Aff., Exhibit C.

11. At the time Wilfrido Cuevas completed the purchase of the Property, it was his understanding that the underlying lawsuit had resulted in a default judgment quieting title in favor of Juan Cuevas and Yrene Baez and that they had good and clean title to said property. Cuevas Aff., ¶ 6.

12. Prior to recording the quitclaim deed, Wilfrido Cuevas conducted a search of the land records of Canyon County to ensure that no other person or entity was claiming title to the Property. Cuevas Aff., ¶ 7.

13. On June 25, 2007, the district court entered an order denying Barraza's motion to set aside default. Appendix A (ROA).

14. On July 25, 2007, Barraza filed a notice of appeal regarding the district court's denial of the motion to set aside. Appendix A (ROA).

15. On June 25, 2008, the Idaho Court of Appeals entered an order setting aside the default judgment entered and remanding the matter back to the district court. Appendix A (ROA).

16. On August 6, 2008, Robert Ward, attorney for Bernardino Barraza, caused a lis pendens to be filed in the land records of Canyon County as Recorder's Instrument No. 2008042920. Rainey Aff., Exhibit D.

17. Neither Barraza nor his attorney ever caused the Answer and Counterclaim that were attached to the Affidavit of Robert Ward in Support of the Motion to Set Aside Default to be filed. Appendix A (ROA).

18. On December 17, 2008, attorney for Juan Cuevas filed a motion for leave to withdraw as attorney of record. Appendix A (ROA).

19. On January 15, 2008, a hearing was held and an order entered granting Juan Cuevas' attorney's motion for leave to withdraw as attorney of record for Juan Cuevas. Appendix A (ROA).

20. On January 23, 2009, Juan Cuevas' attorney filed an affidavit of mailing as required by Idaho Rule of Civil Procedure 11(b)(3). Appendix A (ROA).

21. On March 16, 2009, Barraza filed an application and affidavit for default. Appendix D.

22. On March 17, 2009, an order of default and default judgment were entered against Juan Cuevas and Yrene Baez, quieting title to the Property in favor of Barraza. Appendix E.

23. There is no evidence in the Court's record that Barraza ever filed the Answer and Complaint as required by Idaho Rule of Civil Procedure 5(d). Appendix A (ROA).

24. There is no evidence in the Court's record that Barraza ever served the Answer and Complaint on Juan Cuevas as required by Idaho Rules of Civil Procedure 5(a) and 4. Appendix A (ROA).



25. Barraza caused the judgment and decree quieting title in his name to be filed in the land records of Canyon County on March 24, 2009, as Recorder's Instrument No. 2009013757. Rainey Aff., Exhibit E.

26. On or about June 12, 2009, Wilfrido Cuevas made an attempt to pay property taxes on the Property and was informed by the Clerk at the County Assessor's office that, pursuant to the default judgment entered on March 17, 2009, and on file in the land records of Canyon County as Recorder's Instrument No. 2009013757, he was no longer the owner of the Property. Cuevas Aff., ¶ 9.

### III. LEGAL AUTHORITY

Idaho Rule of Civil Procedure 56 provides that summary judgment is proper if the pleadings, depositions, admissions on file, and affidavits show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 46, 28 P.3d 380, 387 (2001). The facts should be construed in a light most favorable to the nonmoving party. *Brown v. Caldwell Sch. Dist.* No. 132, 127 Idaho 112, 115, 898 P.2d 43, 46 (1995).

The Idaho Supreme Court has adopted the following standard for granting summary judgment:

In our view, the plain language of Rule 56(c) **mandates** the entry of summary judgment, after adequate time for discovery and upon motion, **against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.** In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

*Sparks v. St. Luke's Reg'l Med. Ctr., Ltd.*, 115 Idaho 505, 509, 768 P.2d 768, 772 (1988) (emphasis in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986)).

In this case, there are no disputed issues of material fact and this matter is appropriate for disposition on this motion for summary judgment.

#### IV. ARGUMENT

**A. The Judgment Entered in Canyon County Case No. CV-07-3536 Is Void and Subject to Collateral Attack.**

In this matter, default was taken and default judgment was entered on a counterclaim that was never filed with the Court and that was never served on the party against whom default was taken. "A judgment of a court without jurisdiction is void, and void judgments may be attacked at any time . . . ." *Burns v. Baldwin*, 138 Idaho 480, 486, 65 P.3d 502, 508 (2003) (citing *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990)). "A void judgment . . . may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it . . . . It may be attacked by a person adversely affected by it, in any proceeding, direct or collateral, and at any time." *Martin v. Soden*, 81 Idaho 274, 281, 340 P.2d 848, 852 (1959) (quoting 30A AM. JUR. *Judgments* § 45). A judgment is void if the court lacks personal jurisdiction, subject matter jurisdiction or where a party's due process rights are violated by lack of notice and opportunity to be heard. See *Hartman v. United Heritage Prop. & Cas. Co.*, 141 Idaho 193, 197, 108 P.3d 340, 344 (2005) (quoting *McGrew v. McGrew*, 139 Idaho 551, 558, 82 P.3d 833, 840 (2003)). Likewise, a judgment is "void if [the court] does not have jurisdiction to render the particular relief which the judgment undertakes to grant." *Martin v. Soden*, 81 Idaho 274, 284, 340 P.2d 848, 854 (1959).

As the foregoing establishes, under well-settled Rules of Civil Procedure, where a party does not receive proper service of the claim against him, the court has no jurisdiction to enter judgment on such claims. Likewise, a court does not have jurisdiction or authority to grant relief outside that requested by the pleadings on file with the court. The judgment upon which Barraza relies for his title to the Property is void for two reasons: first, the judgment exceeded the scope of relief requested in the pleadings on file and was, therefore, not within the Court's authority to grant and, second, the Court did not have personal jurisdiction over Juan Cuevas regarding the affirmative relief sought by the proposed counterclaim. For these reasons, the judgment entered in Case No. CV-07-3536 is void and subject to collateral attack.

**1. The judgment entered is void because it exceeded the Court's authority by granting relief not requested in the pleadings on file.**

A review of the docket in Case No. CV-07-3536 reveals that Barraza never filed an answer or counterclaim in that matter. Appendix A (ROA). It is well settled in the law that "[a] court does not have jurisdiction to grant relief beyond the issues tendered by the pleadings." *Martin v. Soden*, 81 Idaho 274, 281, 340 P.2d 848, 852 (1959) ("It is, of course, fundamental that a judgment must be responsive, not only to the prayer, but to the issues tendered by the pleadings. This idea underlies all litigation.") (citations omitted). The fact that the Complaint filed in Case No. CV-07-3536 involved property does not, in and of itself, give the Court jurisdiction to enter a judgment quieting title in the name of any party to the litigation, regardless of the contents of the pleadings on file. Rather, it is required that the judgment must be within and responsive to the issues raised by the allegations and pleadings on file.

In Case No. CV-07-3536 the only pleading seeking affirmative relief on file was the Complaint filed by Juan Cuevas. Appendix A (ROA). Such Complaint brought causes of

action for (i) Quiet Title, which sought to prohibit Barraza from foreclosing on the \$20,000.00 Claim of Lien filed against the property, and (ii) Slander of Title, seeking damages arising from the improperly-filed Claim of Lien. Appendix B (Complaint). Though Barraza attached an answer and counterclaim to the affidavit of counsel in support of his motion to set aside default judgment (Appendix C), Barraza never filed the same with the Court after his motion to set aside the default was granted (Appendix A (ROA)).

Under Idaho law, Barraza is required to actually file his answer and counterclaim with the Court after the default was set aside. *See Viafax Corp. v. Stuckenbrock*, 134 Idaho 65, 995 P.2d 835 (Ct. App. 2000) ("Filing and service of the counterclaim itself could be properly accomplished only after permission had been obtained from the court."). Because Barraza never filed the counterclaim, the Court did not have the authority to grant the relief requested therein. Because the Judgment and Decree Quietening Title entered in Case No. CV-07-3536 granted relief that was not sought by the pleadings on file, such judgment exceeded the Court's authority and is, therefore, void.

Even if this Court were to disregard the rule set forth in *Viafax* and deem the counterclaim attached to the affidavit of counsel as properly filed, the judgment entered was still outside the Court's authority because it was not responsive to the allegations and causes of action raised in the counterclaim and is, therefore, void. As expressed in *Martin*, "the judgment must be responsive, not only to the prayer, but to the issues tendered by the pleadings." *Martin*, 81 Idaho at 281, 340 P.2d at 852. Barraza's proposed counterclaim contained claims for (i) Breach of Written Contract; (ii) Breach of Oral Contract; (iii) Breach of Implied in Fact Contract; (iv) Unjust Enrichment; (v) Equitable Estoppel; and (vi) Quiet Title. Appendix C. While Barraza's quiet title claim alleges that he is the owner of the Property, the other allegations in the

counterclaim establish that, at most, he was in the process of purchasing the Property from Juan Cuevas and, to that end, had paid only \$22,635.76 of the stated \$80,000.00 purchase price. Appendix C at 4, ¶¶ IV and V. Barraza never claimed or alleged that he had made full payment of the purchase price of the property that would have been required in order for the Court to quiet title to the Property in his favor. *See generally* Appendix C. Barraza never made a claim for specific performance of the contract for the sale of the Property, which specific performance would have been required in order for Barraza to have title quieted in his name. *See generally* Appendix C. Because the judgment quieting title in Barraza's name was not responsive to the allegations in the counterclaim and granted relief not available under the causes of action set forth in the counterclaim, the judgment exceeded the Court's authority and is, therefore, void.

**2. The judgment entered is void because the Court did not have personal jurisdiction over Juan Cuevas regarding Barraza's proposed counterclaims.**

A review of the docket in Case No. CV-07-3536 reveals that Barraza not only failed to file his proposed counterclaim, he failed to serve the same on either Juan Cuevas or his attorney. Appendix A (ROA). This specific issue was addressed by the Idaho Court of Appeals in *Viafax Corp. v. Stuckenbrock*, 134 Idaho 65, 995 P.2d 835 (Ct. App. 2000). In *Viafax*, plaintiff asserted a breach of a lease agreement and sought, by its complaint, repossession of the leased vehicle and damages incident to the breach of the lease. *Id.* at 67, 995 P.2d at 837. During the pendency of the action, plaintiff regained possession of the vehicle that was the subject of the action. *Id.* Disagreeing with the manner and means pursuant to which plaintiff regained possession of the vehicle, plaintiff's attorney sought leave to withdraw as plaintiff's counsel of record. *Id.* The same date as the hearing on the motion for leave to withdraw as counsel of record, defendant filed and served a motion for leave to file a counterclaim with a

copy of the proposed counterclaim attached to the motion. *Id.* Plaintiff's attorney's motion for leave to withdraw was granted and plaintiff did not obtain new counsel to represent its interest in the litigation. *Id.* at 67-68, 995 P.2d at 837-38.

Following the withdrawal of plaintiff's attorney, the district court granted defendant's motion for leave to file the counterclaim. *Id.* at 68, 995 P.2d at 38. Defendant filed the counterclaim but failed to serve the counterclaim on plaintiff. *Id.* Defendant moved for default and obtained a judgment against plaintiff. *Id.* Upon learning of the default and judgment, plaintiff brought a motion to set aside the judgment on the basis of surprise, mistake, and excusable neglect pursuant to Idaho Rule of Civil Procedure 60(b)(1). *Id.* The district court denied plaintiff's motion to set aside the default and plaintiff appealed.

In reviewing the district court's denial of the motion to set aside default, the Idaho Court of Appeals carefully studied the service requirements set forth in Idaho Rule of Civil Procedure 5(a), which provides as follows:

**Service and filing of pleadings and other papers - Service -  
When required.**

Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, brief and memorandum of law, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

*Id.* at 69-70, 995 P.2d at 39-40 (emphasis added). The Court of Appeals explained that "[t]his rule plainly required that [defendant's] counterclaim be served on [plaintiff] even though

[plaintiff] had not made a new appearance within twenty days after its attorney's withdrawal." *Id.* at 70, 995 P.2d at 40 (emphasis added). The Court of Appeals then rejected both the district court's and defendant's position that service of the motion for leave to file the counterclaim—with the proposed counterclaim attached—was sufficient to put the plaintiff on notice of the counterclaims to be asserted against it. "In our view the district court erred in concluding that service of this motion alone was sufficient to put [plaintiff] at risk of a default judgment. Service of a motion for leave to file a counterclaim, even with the proposed counterclaim attached, is not the equivalent of service of the counterclaim itself." *Id.* (emphasis added).

Like the defendant in *Viafax*, defendant Barraza never filed or served his counterclaim on Juan Cuevas. Appendix A (ROA). Rather, Barraza's answer and counterclaim were attached only to counsel's affidavit supporting Barraza's motion to set aside default. Appendix C. The district court denied Barraza's motion to set aside the default, Barraza appealed and the Idaho Court of Appeals reversed and remanded. Appendix A (ROA). Barraza never did, however, file the answer and counterclaim after the same was authorized by the Court of Appeal's decision. Appendix A (ROA). Rather, following the Court of Appeal's decision, Juan Cuevas' attorney filed a motion for leave to withdrawal and Barraza thereafter filed a motion for default against Juan Cuevas without ever filing or serving the answer or counterclaim on either Juan Cuevas' attorney, in accordance with Idaho Rule of Civil Procedure 5(a) (which would have been sufficient prior to the Court granting the motion for leave to withdraw), or on Juan Cuevas in accordance with Idaho Rule of Civil Procedure 4 (which was required after the Court granted Juan Cuevas' attorney leave to withdraw). Appendix A (ROA).

As the Idaho Court of Appeals made clear in *Viafax*, the Idaho Rules of Civil Procedure required Barraza to file and serve his answer and counterclaim. Under the rule set

forth in *Viafax*, merely attaching the proposed answer and counterclaim to the motion to set aside default does not comply with this procedural requirement. Pursuant to Idaho Rule of Civil Procedure 5(a), after Juan Cuevas' attorney withdrew from the action Barraza was required to serve the counterclaim, which asserted new and additional claims for relief against Juan Cuevas, in the manner provided by Idaho Rule of Civil Procedure 4. I.R.C.P. 5(a). The failure to properly serve a party with a pleading that seeks affirmative relief creates a jurisdictional defect.<sup>2</sup> Because the counterclaim was never served on Juan Cuevas, the district court did not have jurisdiction to enter a judgment against Juan Cuevas on the counterclaim. Because the district court did not have jurisdiction to enter a judgment against Juan Cuevas, the default judgment quieting title to the property in Barraza's name is void and without force or effect.

**B. *Res Judicata* Does Not Bar Wilfrido Cuevas from Asserting His Interest in the Property.**

In this matter, Barraza has asserted the affirmative defense of *res judicata* alleging that the judgment entered against Juan Cuevas, predecessor in interest to Wilfrido Cuevas, is binding against Wilfrido Cuevas and precludes Wilfrido Cuevas from asserting any interest in the Property. In order to prevail on the affirmative defense of *res judicata*, Barraza must establish that the present action involves the same parties and same claims that went to final judgment in the prior action. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 122, 157 P.3d 613, 616 (2007). In order to establish the affirmative defense of *res judicata*, Barraza must satisfy each and every element of the doctrine by a preponderance of the evidence. *Waller v. Dep't of Health*

---

<sup>2</sup> The Court of Appeals expressly noted that plaintiff did not argue and, therefore, the court did not consider, that the failure to serve the counterclaim made the default judgment void and subject to being vacated under Idaho Rule of Civil Procedure 60(b)(4). *Viafax*, 134 Idaho at 70, 995 P.2d at 840, n.5.



& Welfare, 146 Idaho 234, 237, 192 P.3d 1058, 1062 (2008) (citing *Ticor Title Co.*, 144 Idaho at 122, 157 P.3d at 616). Because Barraza cannot establish that the same parties or same claims are involved in this action and the prior action, the affirmative defense of *res judicata* does not operate as a bar to Wilfrido Cuevas' claims to the Property.

Barraza cannot establish that Wilfrido Cuevas and Juan Cuevas are the "same party." The Idaho Supreme Court has made the following observations in addressing the application of the doctrine of *res judicata* in quiet title actions: "It is well settled that a judgment is conclusive, not only upon those who were actual parties to the litigation, but also upon all persons who are in privity with them." *Smith v. Kessler*, 22 Idaho 589, 127 P. 172, 174 (1912). Whether a successor in interest is in privity with a litigant in a prior action depends on the timing of the transfer of interest in the property:

Every person is privy to a judgment or decree who has succeeded to an estate or interest held by one who was a party to such judgment or decree, if the succession occurred after the bringing of the action. But, in order that privity shall exist, the succession must have occurred after the institution of the suit. One who succeeded to the right of property of a party prior to that time is not in privity with him, and is not concluded by the judgment.

*Id.* (quoting 24 Am. & Eng. Ency. of Law, p. 746 (2d ed.)) (emphasis added).

If a third party acquires rights to property before receiving actual notice that an action affecting the property had been filed, or before a notice of lis pendens has been filed, the third party is not bound by the subsequent judgment or decree entered in the action unless it is made a party to the action.

*Sartain v. Fidelity Fin. Servs., Inc.*, 116 Idaho 269, 272, 775 P.2d 161, 164 (1989) (citing 54 C.J.S. *Lis Pendens* § 35 (1987) and *Roberts v. Friedell*, 218 Minn. 88, 15 N.W.2d 496 (1944)).

In this matter, Wilfrido Cuevas began purchasing the Property from Juan Cuevas and Yrene

Baez in August 2003. Cuevas Aff., ¶ 2. Juan Cuevas and Yrene Baez did not commence litigation to remove the cloud on title created by Barraza's unauthorized lien until April 2007, nearly four years after Wilfrido Cuevas acquired his rights in the Property. Appendix B. During the pendency of that action, prior to the time Barraza was authorized to assert his superior title to Property (by virtue of the Court of Appeals' decision and order) and prior to the time Barraza filed a notice of lis pendens affecting the Property, Wilfrido Cuevas' rights as a vendee in a land sale contract matured into the rights of fee title holder, by virtue of the quitclaim deed. Appendix A (ROA), Rainey Aff., Exhibits C & D. Based on this indisputable timeline and well settled Idaho law, it cannot be said that Wilfrido Cuevas is "in privity" with Juan Cuevas for purposes of *res judicata*.

Barraza also cannot establish that the judgment entered in Case No. CV-07-3536 involved the same claim or causes of action that are at issue in the present litigation. The only claims or causes of action that were at issue in Case No. CV-07-3536 were those causes of action raised in the Complaint filed by Juan Cuevas and Yrene Baez, which included a cause of action to quiet title by removing the cloud on title created by the improper lien filed by Barraza<sup>3</sup> and a cause of action for slander of title. Appendix B. There was never a claim or cause of action to settle the matter of actual ownership of the Property because (i) no such cause of action was raised in the Complaint filed by Juan Cuevas and Yrene Baez (Appendix B), and (ii) Barraza did not ever file or serve the counterclaim putting ownership of the property in issue in Case

---

<sup>3</sup> Idaho law recognizes a distinction between the types of relief that may be obtained in a quiet title action. Not only may a quiet title action be brought to cancel unauthorized records that cast a real cloud on title, but a quiet title action may be brought to cancel or remove unauthorized records that do not actually cast a cloud on title but are, nevertheless, "exceedingly vexatious and injurious." *Maxwell v. Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232, 235 (1930).

No. CV-07-3536 (Appendix A (ROA)). Finally, and perhaps most significantly, the judgment entered in Case No. CV-07-3536 did not even purport to address Wilfrido Cuevas' interest in the Property, though such interest existed as early as August 2003. To the extent that the judgment entered in Case No. CV-07-3536 settled the matter of title as between Juan Cuevas and Yrene Baez and Barraza, it did not settle the matter of title between Barraza and Wilfrido Cuevas and that issue is properly addressed in this litigation.

Finally, it cannot be said that a final judgment was entered in the prior action because the judgment so entered did not reflect the pleadings. As discussed more fully in Section IV.A.1. above, the Court had no authority to quiet title in favor of Barraza because Barraza had not filed his counterclaim seeking such relief and, in the proposed counterclaim, Barraza did not allege facts supporting his claim to title, nor did he allege any causes of action that would have given him a right to claim title to the Property.<sup>4</sup> Because a court does not have jurisdiction to enter judgment on claims or causes of action that are not raised by the pleadings, it cannot be said that the final judgment entered in the prior action bars the current action.

In sum, *res judicata* does not operate to bar Wilfrido Cuevas from asserting his interest in the Property. Wilfrido Cuevas obtained his rights in the Property nearly four years prior to initiation of the prior litigation, thereby establishing that he was not "in privity" with Juan Cuevas and Yrene Baez. Moreover, because Barraza failed to file a counterclaim putting ownership of the Property in issue in the prior judgment, the prior action (which did not invoke the Court's jurisdiction to enter a judgment regarding ownership) and the present case (which

---

<sup>4</sup> At a minimum, based on the allegations set forth in Barraza's proposed counterclaim, Barraza would be required to bring a claim for specific performance of the contract that formed the basis of his claim to title before the Court would have had before it pleadings entitling it to quiet title in Barraza's favor.

does invoke this Court's jurisdiction to enter a judgment regarding ownership) do not involve the same claims or causes of action. Finally, the final judgment entered in the prior action, which addressed matters not properly placed in issue by the pleadings, was entered without jurisdiction and authority and is, therefore, void. Because Barraza cannot establish any of the elements of *res judicata*, the affirmative defense must fail and it is appropriate for this Court to consider the present action on the merits.

**C. Wilfrido Cuevas' Interest in the Property is Superior to Defendants.**

It is well-settled under Idaho law that a person claiming title to property must rest on the strength of his own title, rather than the weakness of his adversary's title. Idaho is a race/notice state and Idaho's recording requirements provide as follows:

Every conveyance of real property other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

IDAHO CODE § 55-812.

Wilfrido Cuevas recorded the quitclaim deed conveying title to the Property from Juan M. Cuevas and Yrene Baez to him on June 20, 2007, in the records of Canyon County as Recorder's Instrument No. 2007043067. Rainey Aff., Exhibit C. Barraza has recorded two documents involving the Property. The first, the Claim of Lien that was the subject of Case No. CV-07-3536, was filed as Recorder's Instrument Nos. 200220593, 20066034 and 2007007336 (Rainey Aff., Exhibit A), and the second, the judgment and decree quieting title in Case No. CV-07-3536, was filed as Recorder's Instrument No. 2009013757 on March 24, 2009 (Rainey Aff., Exhibit E). As discussed in detail above, the judgment and decree quieting title in

Case No. CV-07-3536 is not effective as against Wilfrido Cuevas because such judgment is void and because such judgment does not otherwise have a preclusive effect against Wilfrido Cuevas.

Though recorded prior to Wilfrido Cuevas' quitclaim deed, Barraza's Claim of Lien (Recorder's Instrument Nos. 200220593, 20066034 and 2007007336) does not establish Barraza's superior title to the Property. First and foremost, the Claim of Lien is neither an instrument nor a conveyance of real property, as those terms are used under Idaho's recording statutes. Rather, the Claim of Lien appears to be an attempt by Barraza to create an equitable mortgage on the Property, much like the one at issue in *Maxwell v. Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232 (1930). Like the document filed in *Maxwell*, Barraza has made no claim that the Claim of Lien filed by him is a statutory lien allowed for under Idaho's lien laws. See *Maxwell*, 292 P. at 234. As in *Maxwell*, Barraza can point to no authority that authorizes the filing of his Claim of Lien; because there is no authority for the filing of such Claim of Lien, it should not be deemed an "instrument" as that term is used under Idaho's recording laws. *Id.* at 235. Rather, it is within the type of documents, as the *Maxwell* Court explained, that does not actually cast a cloud on title, but that is, nevertheless, "exceedingly vexatious and injurious." *Maxwell v. Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232, 235 (1930). Because the Barraza Claim of Lien is not an "instrument" under Idaho's recording laws, it also cannot be a "conveyance." Because Barraza's lien is not an instrument or conveyance, as those terms are used under Idaho's recording laws, it has no force and effect regarding title to the Property at issue in this litigation. Barraza cannot, therefore, establish that he has any right, title or interest in the Property that is superior to the quitclaim deed filed by Wilfrido Cuevas.

There can be no doubt that Wilfrido Cuevas' quitclaim deed is properly recorded and effectively conveyed Juan Cuevas and Yrene Baez's interest in the Property to him.

Accordingly, Wilfrido Cuevas is entitled to a judgment and order quieting title to the Property in his favor.

**V. CONCLUSION**

For the foregoing reasons, Wilfrido Cuevas respectfully requests that this Court grant his motion for summary judgment and enter an order quieting title to the Property in his name.

DATED this 21st day of September, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

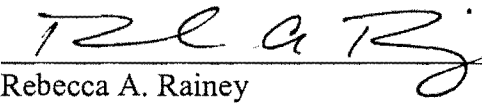
By RE ATR  
Rebecca A. Rainey – Of the Firm  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of September, 2009, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward  
HALL, FRIEDLY & WARD  
340 East 2nd North  
Mountain Home, ID 83647  
Facsimile (208) 587-3144  
*Attorneys for Defendant Bernardino Barraza*

(X) U.S. Mail, Postage Prepaid  
( ) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile

  
Rebecca A. Rainey

# **APPENDIX A**

**000111**



# Case Number Result Page

Canyon

1 Cases Found.

Case: **CV-2007-0003536-C** District: **Juan Manuel Cuevas, etal. vs. Bernardino Flores Barraza Jr, etal.** Filed: **04/02/2007** Subtype: **Other Claims** Judge: **Thomas J Ryan** Status: **Closed 03/17/2009**

Defendants: **Barraza, Bernardino Flores Jr Garza, Liobaldo**

Plaintiffs: **Baez, Yrene Cuevas, Juan Manuel**

Disposition: Date	Judgment Type	Disposition Date	Disposition Type	Parties	In Favor Of
05/15/2007	Quiet Title			Barraza, Bernardino Flores Jr (Defendant), Garza, Liobaldo (Defendant), Cuevas, Juan Manuel (Plaintiff), Baez, Yrene (Plaintiff)	Unknown
03/17/2009	Quiet Title			Barraza, Bernardino Flores Jr (Defendant), Cuevas, Juan Manuel (Plaintiff), Baez, Yrene (Plaintiff)	Unknown

Comment: Favor of Def Bernardino Barraza

Register of actions: Date

04/02/2007 New Case Filed-Other Claims  
 04/02/2007 Summons Issued  
 Filing: G3 - All Other Actions Or Petitions, Not Demanding \$  
 04/02/2007 Amounts Paid by: Perison, Mark D (attorney for Cuevas, Juan Manuel) Receipt number: 0238333 Dated: 4/2/2007 Amount: \$88.00 (Check)  
 05/09/2007 Affidavit Of Service, 4/9 - Liobaldo Garza, 4/15 - Bernardino Barraza  
 05/09/2007 Application for Entry of Default  
 05/09/2007 Affidavit of Mark D Perison in Support of Plts Application for entry of Default  
 05/09/2007 Application for Entry of Default Judgment  
 05/15/2007 Order for entry of default  
 05/15/2007 Judgment  
 Civil Disposition entered for: Barraza, Bernardino Flores Jr, Defendant; Garza, Liobaldo, Defendant; Baez, Yrene, Plaintiff; Cuevas, Juan Manuel, Plaintiff. order date: 5/15/2007  
 05/15/2007 Case Status Changed: Closed  
 05/24/2007 Hearing Scheduled (Motion Hearing 06/14/2007 09:00 AM) set aside default  
 05/24/2007 Case Status Changed: Closed pending clerk action  
 05/24/2007 Motion set aside default  
 05/24/2007 Affidavit of counsel  
 05/24/2007 Notice Of Hearing 06/14/2007  
 06/12/2007 Plaintiffs' Memorandum in opposition to motion to set aside default  
 06/12/2007 Affidavit of Mark Perison in opposition to motion to set aside default  
 06/14/2007 Hearing result for Motion Hearing held on 06/14/2007 09:00 AM: Hearing Held set aside default

000112

06/14/2007 Hearing result for Motion Hearing held on 06/14/2007 09:00 AM:  
 Plan Denied set aside default  
 06/25/2007 Order denying motion to set aside default and default judgment  
 Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to  
 07/25/2007 Supreme Court Plus this amount to the District Court) Paid by:  
 Robert Ward Receipt number: 0257607 Dated: 7/25/2007 Amount:  
 \$15.00 (Check) For: Barraza, Bernardino Flores Jr (defendant)  
 07/25/2007 Bond Posted - Cash (Receipt 257610 Dated 7/25/2007 for 200.00)  
 \$100.00 for Clerks record and \$100.00 for Court Reporter  
 07/25/2007 Appealed To The Supreme Court- Bernardino Barraza  
 07/25/2007 Notice of Appeal  
 10/09/2007 Bond Converted (Transaction number 34329 dated 10/9/2007  
 amount 100.00)  
 10/11/2007 Bond Converted (Transaction number 34347 dated 10/11/2007  
 amount 32.50)  
 10/11/2007 Bond Converted (Transaction number 34355 dated 10/11/2007  
 amount 67.50)  
 06/25/2008 Opinion (S C - Order Denying Motn to Set Aside Default Judgment  
 - Reversed & Remanded)  
 07/14/2008 Order Setting Case for Status conference  
 07/14/2008 Change Assigned Judge  
 07/14/2008 Hearing Scheduled (Conference - Status 08/21/2008 02:30 PM)  
 07/23/2008 Amended Order Setting Case for Status Conference  
 07/23/2008 Hearing result for Conference - Status held on 08/21/2008 02:30  
 PM: Hearing Vacated  
 07/23/2008 Hearing Scheduled (Conference - Status 08/25/2008 03:00 PM)  
 Telephone  
 08/25/2008 Hearing result for Conference - Status held on 08/25/2008 03:00  
 PM: Motion Held in chambers- Telephone  
 08/25/2008 Hearing Scheduled (Conference - Status 10/16/2008 01:30 PM)  
 telephonic conf- court to initiate/ for scheduling order  
 08/27/2008 Order Setting Case for Status Conference  
 10/10/2008 Hearing Scheduled (Conference - Status 10/23/2008 09:00 AM)  
 telephonic conf- court to initiate/ for scheduling order  
 10/10/2008 Amended Notice Of Hearing 10-23-08  
 Hearing result for Conference - Status held on 10/23/2008 09:00  
 10/23/2008 AM: Hearing Held telephonic conf- court to initiate/ for scheduling  
 order  
 12/12/2008 S C - Order Denying Petn for Review  
 12/17/2008 Motion to Withdraw as Attorney of Record  
 12/17/2008 Affidavit in Support of Withdrawal  
 12/17/2008 Notice Of Hearing 01-15-09 at 9:00am  
 12/17/2008 Hearing Scheduled (Motion Hearing 01/15/2009 09:00 AM) MOTN  
 TO WITHDRAW AS ATTORNEY  
 12/22/2008 Notice of non-objection to motion to withdraw as atty  
 01/06/2009 Remittitur (\$311.50 Costs allowed to Appellant)  
 01/15/2009 Order to Withdraw as Attorney M Perison  
 01/15/2009 Hearing result for Motion Hearing held on 01/15/2009 09:00 AM:  
 Hearing Held MOTN TO WITHDRAW AS ATTORNEY  
 01/15/2009 Hearing result for Motion Hearing held on 01/15/2009 09:00 AM:  
 Motion Granted MOTN TO WITHDRAW AS ATTORNEY  
 01/15/2009 District Court Hearing Held Court Reporter: Kim Saunders Number  
 of Transcript Pages for this hearing estimated: less than 100  
 01/23/2009 Affidavit of Mailing  
 03/16/2009 Application for Default  
 03/16/2009 Affidavit for Default  
 03/17/2009 Default

**000113**

Civil Disposition entered for: Barraza, Bernardino Flores Jr,

Defendant; Baez, Yrene, Plaintiff; Cuevas, Juan Manuel, Plaintiff.  
03/17/2009 Filing date: 3/17/2009 Judgmnet & Decree Quieting Title Favor of  
Def

03/17/2009 Case Status Changed: Closed

03/20/2009 Certificate Of Mailing

*Connection: Public*

000114

# **APPENDIX B**

COPY

Mark D. Perison, Bar No. 4804  
MARK D. PERISON, P.A.  
314 S. 9<sup>th</sup> Street, Suite 300  
P. O. Box 6575  
Boise, Idaho 83707-6575  
Telephone: (208) 331-1200  
Fax: (208) 343-5838

Attorneys for Plaintiffs

FILED  
APR 2 2007  
A.M. 30 P.M.

CANYON COUNTY CLERK  
D. BUTLER, DEPUTY

IN THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and  
YRENE BAEZ, individuals

Plaintiffs,

vs.

BERNARDINO BARRAZA, an  
individual, LIOBALDO GARZA,  
an individual, and DOES I  
through X, unknown claimants to  
the real property described in  
Exhibit "A" hereto, commonly  
known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. *CV07-3536*

COMPLAINT TO QUIET TITLE  
AND FOR DAMAGES

COME NOW the Plaintiffs herein, by and through its counsel of record, and

JUDGE  
JAMES C. MORFITT

000116

complains and alleges as follows:

I.

Plaintiff Juan Manuel Cuevas is an individual currently residing in Arizona. Yrene Baez is an individual currently residing in Arizona. Cuevas and Baez are owners of real property located in Canyon County, more particularly described in Exhibit "A" hereto, that is the subject of this action. This parcel shall be referred to herein as "the Property" and is commonly known as 29452 Pearl Road, Parma, Idaho.

II.

Defendant Bernardino Barraza and Defendant Liobaldo Garza are individuals whose current residence address is unknown to Plaintiffs.

III.

The subject matter of this suit is real property located in Canyon County, Idaho, which is more particularly described on Exhibit "A" hereto. Defendants claim an interest in said property and jurisdiction is therefore appropriate under Idaho Code § 5-514.

IV.

Defendants DOES I through X are persons or entities whose true names and identities are unknown to Plaintiff and who have or may assert some claim to the Property. Plaintiff shall substitute the true names and identities of such parties upon their discovery pursuant to I.R.C.P. 10(a)(4).

V.

This action is a request for a judgment quieting title in Plaintiffs to property located in Canyon County, the value of which exceeds \$10,000.00, therefore venue is proper in the District Court of the Third Judicial District, Canyon County.

VI.

On May 6, 2002, Defendants recorded a lien against the subject property as Instrument No. 200220593 in the County Recorder's Office of Canyon County. A copy of the lien is attached hereto as Exhibit "B." According the lien, a notice of the claim upon which the lien was based was served upon the "contractor" on March 7, 2002.

VII.

The lien filed by Defendants asserts a claim against the Property for unpaid amounts claimed due for "labor, services or materials consisting of unpaid refund in the amount \$20,000.00 for the payments on Real estate Title."

VIII.

Plaintiffs have disputed that any such amounts are due or that Defendants have a right under any law of the State of Idaho to file such lien.

COUNT ONE  
(Quiet Title)

IX.

To date, no foreclosure action has been commenced by Defendants to foreclose the lien.

X.

Although it is unclear to Plaintiff the exact nature of the lien, it appears to be based either upon the mechanic's lien statutes of the State of Idaho, Idaho Code § 45-501, *et seq.* or upon a claim of breach of contract.

XI.

The filing of a foreclosure action if the lien is a mechanic's lien is barred by Idaho Code § 45-510 and, according to that code section, said lien has expired.

XII.

If the lien is based upon an alleged breach of contract, an action to enforce that contract, whether or written or oral, has expired by the passage of more than five (5) years since the accrual of the cause of action and is barred pursuant to Idaho Code § 5-216 and/or Idaho Code §5-217. In the lien, the Defendants note that they served copies of their lien on "the contractor" (identified as Plaintiff Juan Manuel Cuevas) on March 7, 2002. Because Defendants knew of the existence of the claim at least by that date, and have failed to act within five (5) years, said claim is now barred.

XIII.

The continued existence of the lien upon the Property constitutes an unlawful cloud upon the title of Plaintiffs.

XIX.

Plaintiffs have previously demanded that Defendants remove the lien from the



record because it constitutes an unlawful cloud upon Plaintiffs' title and Defendants have refused.

XV.

Plaintiff seeks a judgment of this Court quieting title in the name of Plaintiff and against all other claimants once notice to such potential claimants has been provided.

XVI.

Defendants refusal to release the subject lien is frivolous and without legal justification, making an award of attorney fees appropriate under Idaho Code § 12-121 and 12-123.

COUNT TWO  
(Slander of Title)

XVII.

The claim of lien filed by Defendants was filed without a legal basis for doing so and was done for the sole purpose of slandering the title of Plaintiffs in order to extract some advantage therefrom.

XVIII.

The filing of the lien constitutes a slander upon Plaintiffs title for which Plaintiff should be awarded damages.

XIX.

The slander upon Plaintiff's title was done frivolously and without legal justification and an award of attorney fees is therefore appropriate under I.C. § 12-

121 and/or 12-123. An award of fees in the amount of \$5,000.00 is an appropriate amount should judgment be taken by default.

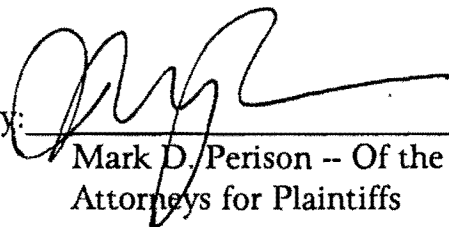
**PRAYER**

WHEREFORE, Plaintiff prays for a Judgment from this Court as follows:

1. For Judgment and Decree of the Court declaring that the lien of Defendants is for all purposes released from the property to the same extent as if Defendants had executed a voluntary release.
2. For Judgment quieting title against any other claimant (currently Does I through X) subsequently identified as an entity claiming an interest in the Property.
3. For entry of Judgment against Defendants in an amount to be proven at trial for slander of Plaintiffs title.
4. For an award of Plaintiffs' attorney fees.
5. For an award of Plaintiff's costs.
6. For such other and further relief as the Court deems just and equitable.

MARK D. PERISON, P.A.

Dated: March 28, 2007.

By:   
Mark D. Perison -- Of the Firm  
Attorneys for Plaintiffs

**A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:**

**Commencing at the Southwest corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence**

**North 0°07' East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence**

**South 55°15' East 336.82 feet; thence**

**South 0°07' West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence**

**South 89°35' West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.**

**EXHIBIT A**

**000122**

INSTRUMENT NO. 200220593 CLAIM OF LIEN

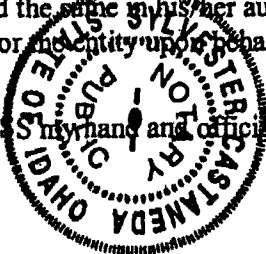
STATE OF IDAHO )  
COUNTY OF Canyon, )

BEFORE ME, the undersigned Notary Public, personally appeared Bernardino Barraza and Liobaldo Garza, who being first duly sworn, says that he is the lienor herein or the agent of the lienor herein, whose address is 16558 Blue Spruce Rd. Nampa, Id, 83651. and that in accordance with a contract with Juan Manuel Cuevas. lienor furnished labor, services or materials consisting of unpaid refund in the amount \$20,000.00 for the payments on Real estate Title. on the following described real property in Canyon County, State of Idaho, and more fully described as "Exhibit A" Attached and made part hereof. and owned by Juan Manuel Cuevas and Yrene Baez single persons. for a total value of Twenty thousand d11s and 00/100 dollars (\$20,000.00 of which there remains unpaid Twenty thousand d11s and 00/100 dollars (\$20,000.00 That the lienor furnished the first of the items on the fifth day of January, 2002. and that the lienor furnished the last of the items on the fifth day of January, 2002. That the lienor served copies of the notice on the contractor on the 7th day of march, 2002, 2002 by \_\_\_\_\_, and on the subcontractor on the \_\_\_\_\_ day of \_\_\_\_\_, 2002 by \_\_\_\_\_

+ Bernardino Barraza  
+ Liobaldo Garza  
Lienor or Lienor's Agent

On the first day of April, 2002 before me, a Notary Public, in and for the State of Idaho, personally appeared Bernardino Barraza/Leobaldo Garza known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESSE My hand and official seal.



[Signature]  
Notary Public for Idaho  
Residing at: Nampa, Id, 83651.  
My Commission expires: 10/02/07.

EXHIBIT B

000123

" EXHIBIT A "

A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as-wit:

Commencing at the Southwest Corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence

North 0 degrees 07' East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence

South 55 degrees 15' East 336.82 feet; thence

South 0 degrees 07' West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence

South 89 degrees 35' West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.

RECORDED

2002220593

2002 MAY 6 AM 9 52

C NOEL HALES  
CANYON CNTY RECORDER

BY

*V. H. Hales*

REQUEST *Blingsland*  
TYPE *full* FEE *6.00*

# **APPENDIX C**

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

**F I L E D**  
A.M. 11:10 P.M.

**MAY 24 2007**

CANYON COUNTY CLERK  
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

AFFIDAVIT OF COUNSEL IN  
SUPPORT OF MOTION TO SET  
ASIDE DEFAULT JUDGMENT  
PURSUANT TO RULE 60(b)

STATE OF IDAHO           )  
                                  ) ss.  
COUNTY OF ELMORE    )

ROBERT WARD, being first duly sworn, deposes and states as follows:

1. That I am the Attorney for the Defendant Bernardino Barraza in the above-entitled action. I make this Affidavit in Support of Defendant's Motion to Set Aside Default Judgment Pursuant to Rule 60(b).

2. That Defendant discussed this case with me, and paid me for my legal advice; however, at that time, no lawsuit was filed and therefore I could not file a Notice of Appearance on behalf of Defendant.

 **ORIGINAL**

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT PURSUANT TO  
RULE 60(b) - 1

000126

3. A Complaint was later filed and Defendant was served with the Complaint, but did not tell me, thus, no Answer and Counterclaim was filed.

4. Defendant believed that I was representing him after our discussions regarding the case, and therefore had the mistaken belief that he did not need to let me know that a lawsuit had been filed and a lady had given him papers as service of process.

5. Defendant speaks very little English, cannot read or write English, and thus did not understand the notice in the Summons requiring him to file a responsive pleading within twenty (20) days.

6. Defendant has a meritorious defense as outlined in the *proposed* Answer and Counterclaim attached hereto, and incorporated as if set forth in full herein.

7. Defendant respectfully requests the Court to set aside the default judgment entered in this case and allow Defendant to file the Answer and Counterclaim attached hereto.

FURTHER, YOUR AFFIANT SAITH NAUGHT.

DATED this 23 day of May, 2007.

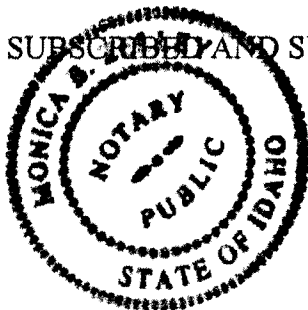
HALL, FRIEDLY & WARD

By

ROBERT WARD

Attorneys for Defendant Bernardino  
Barraza

SUBSCRIBED AND SWORN to before me this 23rd day of May, 2007.



NOTARY PUBLIC, State of Idaho

Residing at Mountain Home, ID

Commission Expires: 11/16/2009

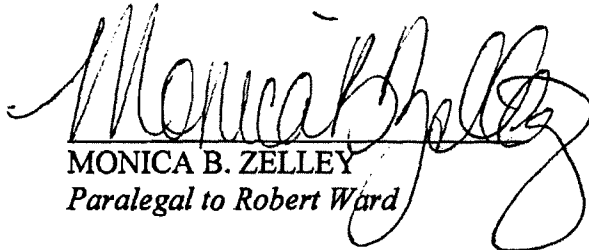


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 22<sup>nd</sup> day of May, 2007, I caused to be served a true and correct copy of the foregoing Affidavit of Counsel in Support of Motion to Set Aside Judgment Pursuant to Rule 60(b) by the method indicated below, addressed to the following:

MARK D. PERISON, P.A.  
3149 S. 9<sup>TH</sup> STREET, SUITE 300  
P.O. Box 6575  
BOISE, ID 83707-6575  
(208) 331-1200  
(208) 343-5838 FAX

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ FAX

  
MONICA B. ZELLE  
*Paralegal to Robert Ward*

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

ANSWER AND

COUNTERCLAIM

Fee Category: J(8)(a)

Fee: \$62.00

**ANSWER**

COMES NOW, Defendant Bernardino Barraza, by and through his attorney of  
record, Robert Ward of the firm Hall, Friedly & Ward, and in answer to the Complaint  
filed herein by the Plaintiffs, admits, denies and alleges as follows:

I.

The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.

II.

Defendant admits the allegations contained in paragraphs III, IV, V, VI, VII, IX, X and XI of Plaintiffs' Complaint to Quiet Title.

III.

Defendant denies the allegations contained in paragraphs II, XII, XIII, XIV, XVI, XVII, XVIII and XIX of Plaintiffs' Complaint to Quiet Title.

IV.

In response to paragraph I of Plaintiffs' Complaint to Quiet Title, Defendant admits only that Plaintiff Juan Manuel Cuevas is an individual currently residing in Arizona, and that Plaintiff Yrene Baez is an individual currently residing in Arizona. Defendant denies the remainder of said paragraph

V.

In response to paragraph VIII of Plaintiffs' Complaint to Quiet Title, Defendant admits only that Plaintiffs' dispute that they owe Defendant money, and denies the remainder of said paragraph.

VI.

In response to paragraph XV of Plaintiffs' Complaint to Quiet Title, Defendant admits only that Plaintiff seeks Quiet Title, and denies the remainder of said paragraph.

### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs sold to Defendant the Property as described in Plaintiffs' Complaint to Quiet Title; Therefore, Defendant is the owner of the property and not Plaintiffs.

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs should be equitably estopped from denying they sold the property to Plaintiff and estopped from asserting their claim for Quiet Title to the property.

### **THIRD AFFIRMATIVE DEFENSE**

More than five years have elapsed since Plaintiff sold the property to Defendant therefore Plaintiff's claims are barred by the applicable statute of limitations.

### **COUNTERCLAIM**

For cause of action against the Plaintiffs, the Defendant Bernardino Barraza complains and alleges as follows:

#### **I.**

The Plaintiffs, to the best of Defendant's knowledge, are residents of the State of Arizona.

#### **II.**

The Defendant, Bernardino Barraza, is now and has been during all of the times mentioned herein a resident of Canyon County, Idaho.

#### **III.**

The subject of this litigation is real property located in Canyon County, Idaho, known as 29452 Pearl Road, Parma, and which is more accurately described in Exhibit A

of the Plaintiffs' Complaint to Quiet Title. Exhibit A is incorporated herein by this reference as if set forth in its entirety. Defendant claims an interest in said property, and jurisdiction is appropriate under Idaho Code § 5-514.

BREACH OF WRITTEN CONTRACT

IV.

Plaintiff executed a written contract on March 6, 2001, wherein Plaintiff sold the subject real property to Defendant for eighty thousand dollars (\$80,000.00). See attached written contract marked "Exhibit 1".

V.

Defendant Bernardino Barraza paid a total of twenty-two thousand six hundred thirty-five dollars and seventy-six cents (\$22,635.76) as a down payment on the subject property.

VI.

Plaintiffs now claim the subject property was not sold to Defendant.

VII.

Plaintiffs have now filed a Quiet Title action, and therefore have breached the written contract wherein they sold the subject property to Defendant.

BREACH OF ORAL CONTRACT

VIII.

Plaintiffs promised to reimburse Defendant twenty thousand dollars (\$20,000.00) upon resale of the subject property if Defendant would vacate the subject property.

IX.

Defendant vacated the subject property.

X.

Plaintiffs, as of this date, have failed to reimburse Defendant the twenty thousand dollars (\$20,000.00) as promised.

XI.

Plaintiffs have now filed this Quiet Title action to avoid paying Defendant twenty thousand dollars (\$20,000.00) as promised, and therefore have breached the oral contract of the parties.

BREACH OF IMPLIED-IN-FACT CONTRACT

XII.

Defendant incorporates paragraphs I – XII of Defendant's Counterclaim into this cause of action as if set forth in their entirety

XIII.

Defendants' actions and Plaintiff's actions as set forth above created an implied-in-fact contract.

XIV.

Defendants have now breached the implied-in-fact contract by filing a quiet title action to avoid paying Defendant his \$20,000.00.

UNJUST ENRICHMENT

XV.

Defendant incorporates paragraphs I – XIV of Defendant's Counterclaim into this cause of action as if set forth in their entirety.

XVI.

Plaintiffs have filed a Quiet Title action in an attempt to negate Defendant's interest in the property and avoid paying Defendant twenty thousand dollars (\$20,000.00) as promised, all of which would result in an unjust enrichment to Plaintiffs.

EQUITABLE ESTOPPLE

XVII

Plaintiff represented to Defendant he would reimburse Defendant twenty thousand dollars (\$20,000.00) if Defendant would vacate the property.

XVIII

Plaintiff intended Defendant to act upon his representation and vacate the property.

XIX

Plaintiff has now filed a Quiet Title action to avoid paying Defendant the twenty thousand dollars (\$20,000.00) as represented.

XX

Defendant was unaware that Plaintiff would refuse to reimburse him as Plaintiff represented.

XXI

Defendant relied upon Plaintiff's representation to him.

XXII

Defendant acted upon Plaintiff's representation and vacated the property.

QUIET TITLE

XXIII

The defendant incorporates into this cause of action paragraphs I-XXII of Defendant's Counterclaim as if set forth in full.

XXIV

Defendant claims a cause of action against Plaintiffs and complains of Plaintiffs named in this action and all other persons unknown claiming any right, title, estate, lien or interest in the real property described adverse to plaintiff's title, and for a cause of action alleges the following.

XXV

The true names or capacities, whether individual, corporate, associate, or otherwise, of Cross Claimants named in this action as Does I through X are unknown to Defendant, who sues such Cross Claimants by such fictitious names, and Defendant will amend this counterclaim to show their true names and capacities, upon such ascertainment.

XXVI

The defendant is the owner of real property located in Canyon County, Idaho, known as 29452 Pearl Road, Parma, and which is more accurately described in Exhibit A of the Plaintiffs' Complaint to Quiet Title. Exhibit A is incorporated herein by this reference as if set forth in its entirety.

XXVII

Plaintiffs claim an interest and estate in such property adverse to Defendant; Plaintiffs' claim is without any right, and Plaintiffs have no right, estate, title, lien or interest in or to the property, or any part of it.



XXVIII

Cross Claimants Does I through Doe X, may claim some estate, right, title, lien or interest in or to the property adverse to Plaintiff's title, and such claim or claims constitute a cloud on Defendant's title to the property.

XXIX

Defendant has retained the law firm of Hall, Friedly & Ward of Mountain Home, Idaho, to prosecute this action on Defendant's behalf and has agreed to pay said attorneys a reasonable fee for their services. The sum of \$150.00 per hour is a reasonable sum to be paid for such attorney's fees.

XXX

Defendant is entitled to recover his attorney fees incurred in the prosecution of this counterclaim against the defendant pursuant to Idaho Code §§ 6-324, 12-120, 12-121, and Rule 54(e) of the Idaho Rules of Civil Procedure.

XXXI

WHEREFORE, the Defendant prays for judgment as follows:

1. That Plaintiffs Complaint to Quiet Title be dismissed;
2. That Plaintiffs be estopped from claiming the property was not sold to Defendant, or in the alternative, be ordered to reimburse Defendant twenty thousand dollars (\$20,000.00);
3. That the Plaintiffs be ordered to specifically perform the written contract and/or oral contract;
4. Plaintiffs, and all persons claiming under them, be required to set forth the nature of their claims to the described real property;

5. All adverse claims to such real property be determined by a decree of this Court;

6. The decree adjudge that Defendant owns in fee simple, and is entitled to the quiet and peaceful possession of, such real property, and that Plaintiffs, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of it;

7. The decree permanently enjoin each Plaintiff, and all persons claiming under them, from asserting any adverse claim to Defendant's property;

8. For costs and disbursements, including reasonable attorney fees in the amount of \$150.00 per hour; and

9. That the court grant such other and further relief to the Defendant as it shall deem proper.

DATED this 21 day of May, 2007.

HALL, FRIEDLY & WARD

By 

ROBERT WARD

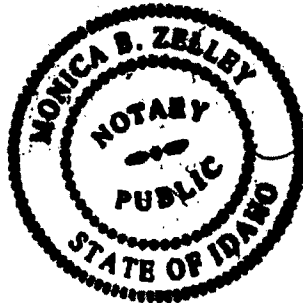
*Attorneys for Defendant Bernardino Barraza*

STATE OF IDAHO,                    )  
  ) ss.  
COUNTY OF ELMORE,            )

Bernardino Barraza, being first duly sworn, deposes and says that he is one of the Defendants named in the foregoing Answer and Counterclaim, that he has read said Answer and Counterclaim, knows the contents thereof and believes the facts therein stated to be true.

Bernardino Barraza  
BERNARDINO BARRAZA  
Defendant

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of May, 2007.



Monica B. Zelle  
NOTARY PUBLIC, State of Idaho  
Residing at Mountain Home, ID  
My commission expires: 11/16/2009

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 22<sup>nd</sup> day of May, 2007, I caused to be served a true and correct copy of Answer and Counterclaim by the method indicated below, addressed to the following:

MARK D. PERISON, P.A.  
3149 S. 9<sup>TH</sup> STREET, SUITE 300  
P.O. Box 6575  
BOISE, ID 83707-6575  
(208) 331-1200  
(208) 343-5838 FAX

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ FAX

Monica B. Zelle  
MONICA B. ZELLE  
Paralegal to Robert Ward

29452 ~~PEARL~~ Pearl Rd

Parma ID

03-06-01

~~1800-~~

83660



Juan Manuel Cuevas

Hene B&Z

50

JUAN MANUEL Cuevas

Received 1000<sup>00</sup> Against RANCH

at 29452 Pearl Rd, Parma ID

83660.

~~RANCH~~ sold for 8000<sup>00</sup>

I AM Leasing Rch for 216 mths  
for 500<sup>00</sup> per month, 1/25/01

Rent will Apply Against Prince  
1000<sup>00</sup> I AM receiving today

will Apply Against Prince

80000

10000

JUAN M. CUEVAS

BAT 79,000

# **APPENDIX D**

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

**F I L E D**  
8:50 A.M. P.M.

**MAR 16 2009**

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

APPLICATION FOR ENTRY OF  
DEFAULT

Defendant, Bernardino Barraza, hereby applies for the entry of default judgment against Plaintiffs, Juan Manuel Cuevas and Yrene Baez, in that they have failed to file and serve an additional written appearance within twenty (20) days of service of the Order Granting Motion to Withdraw as Attorney of Record. Defendant hereby certifies that the address most likely to give said Plaintiff notice of such default judgment is as follows:

Juan Manuel Cuevas  
Yrene Baez  
5019 W. Edgemont Avenue  
Phoenix, AZ 85035

DATED this 10 day of March, 2009.

HALL, FRIEDLY & WARD

By 

Robert Ward

*Attorneys for Defendant*

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

FILED  
85 A.M. P.M.

MAR 16 2009

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

AFFIDAVIT FOR DEFAULT

STATE OF IDAHO, )  
) ss.  
COUNTY OF \_\_\_\_\_, )

Bernardino Barraza, being first duly sworn, deposes and states as follows:

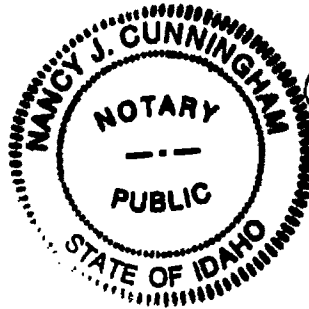
I am the Defendant named in the above-entitled action, which action has been brought for the purpose of quieting title to certain real property located in Parma, in the County of Canyon, State of Idaho; that Plaintiffs, Juan Manuel Cuevas and Yrene Baez, are not now in the military service of the United States of America in any capacity whatsoever, and that Plaintiffs, Juan Manuel Cuevas and Yrene Baez, are not persons in



military service as defined in Section 101 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 501 et seq., or as defined in any other Act of Congress or of the State Legislature, duly adopted and approved; that Plaintiffs, Juan Manuel Cuevas and Yrene Baez, are not infants nor incompetent persons.

Bernardino Barraza  
Bernardino Barraza

SUBSCRIBED AND SWORN to before me this 11 day of March, 2009.



[Signature]  
Notary Public for Idaho  
Residing at 1414 N. 1st St. ID  
My commission expires: 12/16/2011

# **APPENDIX E**

2009013757

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barrera*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

RECORDED

FILED  
MAR 17 2009  
A.M. 10:52 P.M.

WILLIAM H. HURST  
CANYON COUNTY RECORDER  
BY *[Signature]* T. CRAWFORD, DEPUTY  
CANYON COUNTY CLERK  
RECEIVED *Hall & Friedly*  
TYPE *Three*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JUAN MANUEL CUEVAS and YRENE  
BAEZ, individuals,

Plaintiffs,

vs.

BERNARDINO BARRAZA, an individual,  
LIOBALDO GARZA, an individual, and  
DOES I through X, unknown claimants to the  
real property described in Exhibit "A",  
commonly known as 29452 Pearl Road,  
Parma, Idaho,

Defendants.

Case No. CV-07-3536

JUDGMENT AND DECREE  
QUIETING TITLE

The above-entitled cause came on regularly before the Court in Caldwell, County of Canyon, State of Idaho, on the 16 day of March, 2009. The Plaintiffs, Juan Manuel Cuevas and Yrene Baez, having been duly and regularly served with the Order Granting Motion to Withdraw as Attorney of Record. The Plaintiffs, Juan Manuel Cuevas and Yrene Baez, having failed to file and serve an additional written appearance within twenty (20) days of service of the Order Granting Motion to Withdraw as Attorney of Record, either in person, by attorney or otherwise, pursuant to the Order Granting Motion to Withdraw as Attorney of Record.

COPY

The Court has reviewed the record and file in this action and the Answer and Counterclaim of Defendant, Bernardino Barraza, respecting ownership and possession of the real property described therein; the Answer and Counterclaim having been verified; and the Court being satisfied that the relief asked for should be granted.

NOW, THEREFORE, Upon application of counsel of the Defendant, and upon the Affidavit of Defendant that none of the Plaintiffs are infants or incompetent persons, nor now in the active military service of the Unites States of America;

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the Defendant, Bernardino Barraza, owns in fee simple and is entitled to the quiet and peaceful possession of the parcel of land commonly known as 29452 Pearl Road, Parma, Idaho, situated in the County of Canyon, State of Idaho, and described in Exhibit "A" attached hereto and by reference incorporated herein.
2. That Defendant, Bernardino Barraza's, title to said real property is forever quieted against all claims or demands of the Plaintiffs, Juan Manuel Cuevas and Yrene Baez, in all or any part of said real property.

DATED this 16 day of March, 2008.

State Of Idaho  
County Of Canyon  
I hereby certify that the foregoing instrument  
is a true and correct copy of the original as  
the same appears in this office.  
DATED

WILLIAM H. HUBBY, Clerk of the District Court



WILLIAM H. HUBBY  
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of March, 2009, a

true and correct copy of the within and foregoing document was served upon:

Robert Ward  
Hall, Friedly & Ward  
340 E. 2<sup>nd</sup> North  
Mountain Home, ID 83647

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Juan Manuel Cuevas  
Yrene Baez  
5019 W. Edgemont Avenue  
Phoenix, AZ 85035

*No Envelope*

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

*[Signature]*  
Clerk of Court

A part of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described to-wit:

Commencing at the Southwest corner of the Southwest Quarter of the Southeast Quarter, Section 19, Township 6 North, Range 5 West, Boise Meridian; the INITIAL POINT of this description; thence

North  $0^{\circ}07'$  East 924 feet, along the West line of the said Southwest Quarter of the Southeast Quarter; thence

South  $55^{\circ}15'$  East 336.82 feet; thence

South  $0^{\circ}07'$  West 730 feet, parallel to the said West line, to a point on the South line of the said Southwest Quarter of the Southeast Quarter; thence

South  $89^{\circ}35'$  West 277.15 feet, along the said South line to the INITIAL POINT OF THIS DESCRIPTION.

EXHIBIT A

000149

**F I L E D**  
1035 A.M. P.M.

**SEP 22 2009**

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

Mark C. Peterson, ISB No. 6477  
Rebecca A. Rainey, ISB No. 7525  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 South Capitol Boulevard, 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
mcp@moffatt.com  
rar@moffatt.com  
24163.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any); LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED IN  
EXHIBIT "A", COMMONLY KNOWN AS  
29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW Plaintiff Wilfrido Cuevas, by and through his undersigned counsel of record, and hereby files this motion for summary judgment pursuant to Idaho Rule of Civil Procedure 56(a). This motion is supported by all pleadings on file in this matter, including but not limited to the Memorandum in Support of Plaintiff's Motion for Summary Judgment filed September 21, 2009, the Affidavit of Rebecca A. Rainey in Support of Plaintiff's Motion for Summary Judgment filed September 21, 2009, and the Affidavit of Wilfrido Cuevas in Support of Plaintiff's Motion for Summary Judgment filed September 21, 2009.

Plaintiff requests oral argument on this motion.

DATED this 22nd day of September, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By Rebecca A. Rainey  
Rebecca A. Rainey – Of the Firm  
Attorneys for Plaintiff



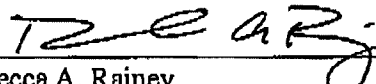
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of September, 2009, I caused a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward  
HALL, FRIEDLY & WARD  
340 East 2nd North  
Mountain Home, ID 83647  
Facsimile (208) 587-3144

*Attorneys for Defendant Bernardino Barraza*

(X) U.S. Mail, Postage Prepaid  
( ) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile

  
\_\_\_\_\_  
Rebecca A. Rainey

**FILED**  
830 A.M. P.M.  
**OCT 21 2009**  
**CANYON COUNTY CLERK**  
**TEARLS, DEPUTY**

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any), LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED  
IN EXHIBIT "A", COMMONLY KNOWN  
AS 29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

ANSWERING BRIEF IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

COMES NOW the Defendant, Bernardino Barraza, by and through his attorney of  
record, Robert Ward of the firm Hall, Friedly & Ward, and hereby lodges his  
Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

**FACTS**

On March 6, 2001, Juan Manuel Cuevas sold the real property commonly known as  
29452 Pearl Road, Parma, Idaho, (the "real property") to Defendant, Bernardino Barraza,  
per written contract.

On May 6, 2002, Defendant, Bernardino Barraza, recorded a lien with the Canyon  
County Recorder's Office against the real property since Juan Manuel Cuevas failed to

**000153**

transfer title of said real property to Defendant, Bernardino Barraza.

Prior to Juan Manuel Cuevas initiating any legal action, Plaintiff, Wilfrido Cuevas, called Defendant, Bernardino Barraza, and requested copies of payments and any documents he had in his possession regarding the transaction between Juan Manuel Cuevas and Defendant, Bernardino Barraza, with reference to the real property.

Plaintiff, Wilfrido Cuevas, told Defendant, Bernardino Barraza, that Juan Manuel Cuevas was now wanting to sell the real property to him and that Wilfrido knew that Juan Manuel Cuevas had previously sold the real property to Defendant, Bernardino Barraza.

Plaintiff, Wilfrido Cuevas, told Defendant, Bernardino Barraza, that he should demand a refund of all monies paid to Juan Manuel Cuevas for the real property, so that Wilfrido could buy the real property instead.

Plaintiff, Wilfrido Cuevas, and Defendant, Bernardino Barraza, discussed retaining an attorney to ensure that Juan Manuel Cuevas was fair and dealing honestly with both parties.

Defendant, Bernardino Barraza, went to meet with Plaintiff, Wilfrido Cuevas, about three (3) days after their conversation but Wilfrido refused to speak with Defendant, Bernardino Barraza.

Defendant, Bernardino Barraza, and his attorney, Robert Ward, called Plaintiff, Wilfrido Cuevas, shortly thereafter. Wilfrido stated in his conversation with Defendant and Mr. Ward, that Defendant had lost all rights to the real property per the Statute of Limitations. Plaintiff, Wilfrido Cuevas, further stated that he was no longer interested in retaining an attorney to deal with the purchase of the real property from Juan Manuel Cuevas, and was at that time renting and maintaining the real property since it belonged to

Juan Manuel Cuevas. Plaintiff, Wilfrido Cuevas, said that Juan Manuel Cuevas was family, and that he no longer wanted to discuss the real property issue with Defendant, Bernardino Barraza.

On April 2, 2007, a quiet title action commenced on the real property between Juan Manuel Cuevas and Defendant, Bernardino Barraza.

In May of 2007. Juan Manuel Cuevas obtained a default judgment on the real property which was timely set aside by the Idaho Court of Appeals.

May 24, 2007, Defendant, Bernardino Barraza, filed his Answer and Counterclaim with the court. The Answer and Counterclaim alleged quiet title as a cause of action. It was filed in the manner as required by I.R.C.P. 5(d) and (e) and it was served upon Juan Manuel Cuevas as evidenced by the Certificate of Mailing, on May 23, 2007, in a manner as required by I.R.C.P. 5(a) and (b).

On June 20, 2007, while the appeal process was pending, Juan Manuel Cuevas apparently quitclaimed his interest in the real property to Plaintiff, Wilfrido Cuevas. Plaintiff, Wilfrido Cuevas', own affidavit states that he was aware of the lawsuit and Defendant, Bernardino Barraza's, claims. He also stated in his affidavit that he was aware of Defendant, Bernardino Barraza's, recorded lien and that he went to the title company to search records. Plaintiff, Wilfrido Cuevas, was aware at this time that Juan Manuel Cuevas could not give clear title to the real property. A quitclaim deed was executed between Juan Manuel Cuevas and Plaintiff, Wilfrido Cuevas, because they could not get a clear title through the title company.

On June 24, 2008, the Idaho Court of Appeals entered its Opinion, granting Defendant's Motion to Set Aside Juan Manuel Cuevas' default judgment.

On January 15, 2009, Mark D. Perison, attorney for Juan Manuel Cuevas, withdraws as attorney of record.

On March 17, 2009, Defendant, Bernardino Barraza, obtained a quiet title judgment as to the real property.

**DISPUTED FACTS AS STATED IN PLAINTIFF'S MEMORANDUM**

Defendant, Bernardino Barraza, disputes the facts as stated in Plaintiff's Memorandum in Support of Motion for Summary Judgment and specifically disputes the following.

Plaintiff, Wilfrido Cuevas, claims in paragraph 2 of Plaintiff's Memorandum in Support of Motion for Summary Judgment, that a written contract between Juan Manuel Cuevas and Defendant, Bernardino Barraza, was rescinded. The contract was never rescinded and thus, this claim is false.

Plaintiff, Wilfrido Cuevas, further states in paragraph 4 of Plaintiff's Memorandum in Support of Motion for Summary Judgment, that Plaintiff began purchasing the real property from Juan Manuel Cuevas under an oral contract. Defendant, Bernardino Barraza, disputes this fact. The Statute of Frauds and parole evidence rule prohibit Plaintiff from presenting any evidence in this present case regarding an alleged oral contract between himself and Juan Manuel Cuevas. Furthermore, oral contracts to transfer real estate are not valid. Furthermore, Plaintiff advised Defendant, Bernardino Barraza, that he was only renting the real property from Juan Manuel Cuevas.

In paragraph 23 of Plaintiff's Memorandum in Support of Motion for Summary Judgment, Plaintiff, Wilfrido Cuevas, states that Defendant, Bernardino Barraza's, Answer and Counterclaim was not properly filed as required by I.R.C.P. 5(d). This is false.

Defendant's Answer and Counterclaim was properly filed as required by I.R.C.P. 5(d) and 5(e). The quiet title judgment entered by the court on March 17, 2009, indicates that the court reviewed the Answer and Counterclaim filed with the court. No authority exists to support Plaintiff's claim that Defendant's Answer and Counterclaim was not filed with the court.

Plaintiff further claims in paragraph 24 of Plaintiff's Memorandum in Support of Motion for Summary Judgment, that Juan Manuel Cuevas was not properly served a copy of the Answer and Counterclaim. Defendant, Bernardino Barraza, disputes this fact in that Juan Manuel Cuevas was served a copy of the Answer and Counterclaim on May 23, 2007, in a manner as required by I.R.C.P. 5(a) and 5(b). A Certificate of Service was attached to said Answer and Counterclaim and dated May 23, 2007. Furthermore, there is no authority to claim that said Answer and Counterclaim was not served and Juan Manuel Cuevas has never disputed the issue of being properly served Defendant's Answer and Counterclaim.

### **LEGAL AUTHORITY**

Plaintiff's Motion for Summary Judgment should be denied because Plaintiff has not shown that there is no dispute of material fact. Furthermore, Plaintiff has failed to show that he is entitled to judgment as a matter of law.

Plaintiff is requesting the Court to grant his Motion for Summary Judgment based on Plaintiff's present quiet title complaint, however Plaintiff's motion and memorandum do not argue quiet title. It simply argues Defendant, Bernardino Barraza's, prior quiet title judgment is not valid even though no motion was ever filed to set it aside.

The Court in the present case does not have authority to overturn a previous

judgment in a prior case. Especially since no motion to set aside was ever filed nor was any appeal every filed by Juan Manuel Cuevas.

### **ARGUMENT**

#### **GRANTING RELIEF NOT REQUESTED IN PLEADINGS**

Plaintiff's allegation that Defendant, Bernardino Barraza's, prior quiet title judgment is "void" because said judgment granted relief not requested in the pleadings, is without merit. Defendant, Bernardino Barraza, alleged quiet title as a cause of action on page 7 of his Answer and Counterclaim. Plaintiff, Wilfrido Cuevas, has not presented any authority whatsoever to show Defendant's quiet title judgment is "void". No motion to set aside, nor any appeal, was ever filed by Juan Manuel Cuevas.

The *Viafax* case cited by Plaintiff does not mention in any way whatsoever that the previous quiet title judgment would be "void". In fact, *Viafax* held that the motion to set aside judgment, filed by the party to the case, was properly denied as untimely. *Viafax* noted in dicta that if a party to the judgment would have timely filed a motion to set aside judgment for lack of service of new claims after the withdrawal of the attorney, the court could have granted the motion. *Viafax* held that no motion to set aside judgment was timely filed therefore the judgment remained valid. In the present case, no motion to set aside judgment was timely filed therefore, the judgment remains valid.

Defendant, Bernardino Barraza's, Answer and Counterclaim was attached to the Affidavit of Counsel in Support of Motion to Set Aside Judgment Pursuant to Rule 60(b) and properly filed with the Court. I.R.C.P. 5(d) and 5(e) states:

Rule 5(d). Filing.

All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time

thereafter filed. If the papers have been filed before service, the filing date shall be noted thereon.

Rule 5(e). Filing with the court.

(1) Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may accept the papers for filing, in which event the judge shall note thereon the filing date, hour and minute and forthwith transmit them to the office of the clerk.

The quiet title judgment entered by the court specifically recognizes the Answer and Counterclaim was filed with the court. "The Court has reviewed the record and file in this action and the Answer and Counterclaim of Defendant, Bernardino Barraza, respecting ownership and possession of the real property described therein; the Answer and Counterclaim having been verified; and the Court being satisfied that the relief asked for should be granted."

Referencing *Viafax* at 68, the Idaho Court of Appeals never disturbed the District Court's holding that the counterclaim attached to the Motion for Leave was filed, however the court did not deem it filed until June 6, 1997, the date of the Order Granting Motion for Leave to File. The motion for leave to file a counterclaim, with the counterclaim attached, was filed with the court on April 25, 1997, the same date as the hearing on the motion to withdraw. *Id* at 67. On June 6, 1997, the District Court granted the motion for leave to file the counterclaim. *Id* at 68. Thus the counterclaim attached to the motion for leave was in the court's possession and filed, however it was not deemed filed until the court entered its order granting permission to file.

Defendant, Bernardino Barraza's, Answer and Counterclaim was served upon Juan Manuel Cuevas on May 23, 2007. I.R.C.P. 5(a) and 5(b) state:

Rule 5(a). Service and filing of pleadings and other papers - Service - When required. Every order required by its terms to be served, every pleading



subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, brief and memorandum of law, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

Rule 5(b). Service - How made.

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.

Defendant's Certificate of Service attached to the Answer and Counterclaim clearly states that "I hereby certify that on the 23<sup>rd</sup> day of May, 2007, I caused to be served a true and correct copy of the Answer and Counterclaim by the method indicated below, addressed to the following: U.S. Mail - Mark D. Perison, 3149 S. 9<sup>th</sup> Street, Suite 300, P.O. Box 6575, Boise, Idaho, 83707-6575."

In accordance to I.R.C.P. 5(b), it is standard procedure to serve opposing counsel, if one has already appeared in the case. The exception to this rule is when pleadings are filed which assert new claims against parties who are in default, and are not represented by an attorney, then the parties must be served personally. The attorney in *Viafax* withdrew before the counterclaim was deemed filed, therefore since there was not an attorney of record, personal service would have been required to comply with I.R.C.P. 5(a) and (b). In the case between Juan Manuel Cuevas and Defendant, Bernardino Barraza, no attorney withdrew prior to service of Defendant, Bernardino Barraza's, Answer and Counterclaim, upon opposing counsel. The Idaho Court of Appeals filed their opinion on June 24, 2008, and Mr. Perison did not withdraw as attorney for Juan Manuel Cuevas until January 14, 2009.

Defendant, Bernardino Barraza's, Answer and Counterclaim was properly filed and served as required by I.R.C.P. 5. Neither *Viafax* nor any other case supports Plaintiff's claim that Defendant, Bernardino Barraza's, quiet title judgment would be void. Defendant, Bernardino Barraza's, quiet title judgment has never been set aside nor appealed. The court's decision in *Viafax* holding that the judgment remains valid since no motion to set aside was timely filed, is applicable to this case.

### **PERSONAL JURISDICTION**

Plaintiff's allegation that Defendant, Bernadino Barraza's, prior quiet title judgment is "void" because the previous court did not have personal jurisdiction over Juan Manuel Cuevas is without merit.

The Court in the case between Juan Manuel Cuevas and Defendant, Bernardino Barraza, had personal jurisdiction over the parties to the case.

Neither party ever claimed lack of personal jurisdiction as a defense. I.R.C.P. 4(i) provides that the voluntary appearance of a party or service of any pleading by a party constitutes voluntary submission to the personal jurisdiction of the Court.

Juan Manuel Cuevas filed his quiet title action with the Court, therefore subjecting himself to the personal jurisdiction of the Court on that basis alone.

Defendant, Bernardino Barraza, also filed a claim for quiet title and was ultimately granted a judgment of quiet title.

It is clear that the Court had personal jurisdiction over the parties to the lawsuit.

Defendant, Bernardino Barraza's, judgment of quiet title has never been set aside nor has an appeal ever been filed.

## RES JUDICATA

*Res judicata* bars Plaintiff, Wilfrido Cuevas, from claiming he is the owner of the real property.

The previous quiet title judgment obtained by Defendant, Bernardino Barraza, is *res judicata* between Defendant, Bernardino Barraza, and Plaintiff, Wilfrido Cuevas', predecessor in title, Juan Manuel Cuevas. *Ticor Title Co. v. Stanion*, 144 ID 119. Defendant, Bernardino Barraza, and Juan Manuel Cuevas were both parties to that action and the quiet title judgment has never been appealed or set aside.

Plaintiff, Wilfrido Cuevas, could not acquire any greater interest than that adjudicated to be held by his predecessor in interest, Juan Manuel Cuevas. Since Juan Manuel Cuevas was adjudicated not to have any interest in the real property, Plaintiff, Wilfrido Cuevas, did not acquire any interest in the real property pursuant to his quitclaim deed. "It is well settled that a judgment is conclusive, not only upon those who were actual parties to the litigation, but also upon all persons who are in privity with them." *Smith v. Kessler*, 22 Idaho 589 (1912) (emphasis added).

Plaintiff, Wilfrido Cuevas, as a successor in interest from Juan Manuel Cuevas is in privity with Juan Manuel Cuevas under the previous quiet title judgment.

Every person is privy to a judgment or decree who has succeeded to an estate or interest held by one who was a party to such judgment or decree, if the succession occurred after the bringing of the action. But, in order that privity shall exist, the succession must have occurred after the institution of the suit. One who succeeded to the right of property of party prior to that time is not privy with him, and is not concluded by the judgment.

*Id.* (quoting 24 Am. & Eng. Ency. Of Law, p. 746 (2d ed.)) (emphasis added)

Plaintiff, Wilfrido Cuevas', predecessor in title filed the previous quiet title action on April 2, 2007. Plaintiff, Wilfrido Cuevas, did not receive his quitclaim deed from his

predecessor in title until June 20, 2007. Plaintiff, Wilfrido Cuevas, clearly received his quitclaim deed "after" the commencement of the previous quiet title action filed by his predecessor in interest. Therefore the previous quiet title judgment is *res judicata* to Plaintiff, Wilfrido Cuevas.

### **PLAINTIFF'S ALLEGED ORAL CONTRACT**

Any alleged oral contract is invalid to transfer real property. I.C. § 9-503, also known as the Statute of Frauds, provides that a contract to transfer an interest in real property must be in writing. Thus, any alleged oral contract is invalid since it violates the Statute of Frauds.

**Idaho Code § 9-503. Transfers of real property to be in writing.** No estate or interest in real property, other than for leases for a term not exceeding one (1) year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing. (emphasis added)

The Court in *Mcginness v. Stanfield*, 6 Idaho 372 (1898), held that no interest in real estate can be created by an oral contract.

Under the statutes we are unable to hold that title to real estate, or an interest in real estate, can be established by proof of a verbal transfer. Id. at 378, 379

The deed subsequently procured by her from Glenn, some 14 years after he had left the country, could only have effect from its date. Id. at 379

The parole evidence rule prohibits Plaintiff, Wilfrido Cuevas, from presenting any evidence in the present case regarding any alleged oral contract to purchase the real property. The exception of partial performance is based upon the equitable remedy of specific performance and can only be used in disputes between parties to the oral contract.

*Mcginness v. Stanfield* held that an oral contract for the sale of real property is not admissible in evidence to establish title against a stranger to the oral contract. Defendant, Bernardino Barraza, was not a party to the alleged oral contract, and therefore, Plaintiff, Wilfrido Cuevas, is prevented from presenting any evidence regarding an alleged oral contract.

### **BONA FIDE PURCHASES**

Plaintiff, Wilfrido Cuevas, is not a bona fide purchaser for value of the real property and thus his claim to the property is not superior to the interest of Defendant, Bernardino Barraza.

**Idaho Code § 55-812. Unrecorded conveyance void against subsequent purchasers.** – Every conveyance of real property other than a lease for a term not exceeding one (1) years, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Although Plaintiff, Wilfrido Cuevas, recorded his quitclaim deed, he has not shown that he paid a valuable consideration and acquired his quitclaim deed in good faith.

Furthermore, the court in *Langroise v. Becker*, 96 Idaho 218, 526 P.2d 178 (1974), held that one who purchases property with notice of conflicting claims, or fails to investigate an obvious conflicting claim does not take in “good faith” and will not prevail over a prior purchaser. Plaintiff, Wilfrido Cuevas, by his own admission, was aware of the previous quiet title action. Wilfrido Cuevas was also aware of the lien recorded by Defendant, Bernardino Barraza, prior to any court action. Plaintiff, Wilfrido Cuevas, obviously did not take in “good faith”.

Further, the court in *Smith v. Kessler*, 22 Idaho 589, 127 P. 172 (1912), held that a judgment entered in a court of competent jurisdiction has the same actual and constructive

notice to the parties and privies to the suit and serves the same purpose as is provided by the recording statutes. Thus, Defendant, Bernardino Barraza's, quiet title judgment obtained in good faith in an action where both parties were represented by attorneys gave him bona fide purchaser status superior to any interest of Plaintiff, Wilfrido Cuevas, upon entry by the court.

Defendant, Bernardino Barraza, is the owner of the real property pursuant to I.C. § 55-606.

**Idaho Code § 55-606. Conclusiveness of conveyance – Bona fide purchasers.** – Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer, who in good faith, and for a valuable consideration, acquires a title or lien by an instrument or valid judgment lien that is first duly recorded.

Defendant, Bernardino Barraza's, quiet title judgment is conclusive against Juan Manuel Cuevas and also against Plaintiff, Wilfrido Cuevas, who subsequently received a quitclaim deed claiming under Juan Manuel Cuevas.

### **CONCLUSION**

Plaintiff's Motion for Summary Judgment should be denied because he has failed to show that no material dispute of fact exists and that he is entitled to judgment as a matter of law.

DATED this 20 day of October, 2009.

HALL, FRIEDLY & WARD

By 

Robert Ward

*Attorneys for Defendant*

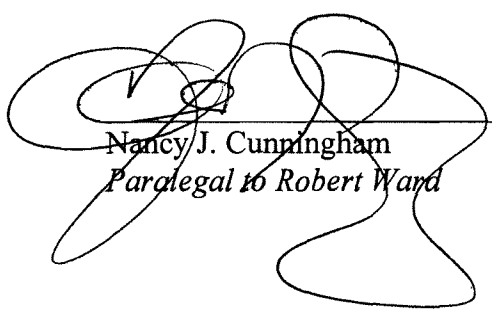
**000165**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 20 day of October, 2009, I caused to be served a true and correct copy of Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment by the method indicated below, addressed to the following:

REBECCA A. RAINEY  
MOFFATT, THOMAS, BARRETT, ROCK  
& FIELDS, CHTD.  
P.O. BOX 829  
BOISE, ID 83701  
FAX: (208) 385-5384

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☒ FAX



Nancy J. Cunningham  
*Paralegal to Robert Ward*

000166

OCT 21 2009

CANYON COUNTY CLERK  
T EARLS, DEPUTY

ROBERT WARD  
HALL, FRIEDLY & WARD  
*Attorneys for Defendant Bernardino Barraza*  
340 East 2nd North Street  
Mountain Home, Idaho 83647  
Telephone: (208) 587-4412  
Facsimile: (208) 587-3144  
Idaho State Bar Number 4442

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual  
and spouse (if any), LIOBALDO GARZA, an  
individual and spouse (if any); DOES I  
THROUGH X, UNKNOWN CLAIMANTS  
TO THE REAL PROPERTY DESCRIBED  
IN EXHIBIT "A", COMMONLY KNOWN  
AS 29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

OBJECTION AND MOTION TO  
STRIKE

COMES NOW the Defendant, Bernardino Barraza, by and through his attorney of record, Robert Ward of the firm Hall, Friedly & Ward, and hereby objects to the Affidavit of Wilfrido Cuevas filed herein and further moves the Court for an order striking any reference by Plaintiff, Wilfrido Cuevas, in said affidavit as to an oral contract between Plaintiff and Juan Manuel Cuevas.

It is well known in the State of Idaho that Idaho Code § 9-503, also known as the Statute of Frauds, provides that a contract to transfer real property must be in writing.



Parole evidence rule prohibits Plaintiff, Wilfrido Cuevas, from presenting any evidence of an oral contract in this present case since Defendant, Bernardino Barraza, was not a party to the alleged oral contract between Plaintiff, Wilfrido Cuevas, and Juan Manuel Cuevas. *McGinness v. Stanfield*, 6 Idaho 372, 55 P. 1020 (1898).

This Motion is based on the files and records contained herein and Affidavit of Bernardino Barraza filed contemporaneously herewith.

DATED this 20 day of October, 2009.

HALL, FRIEDLY & WARD

By 

Robert Ward

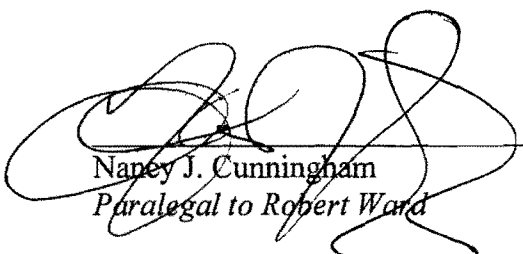
*Attorneys for Defendant*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 20 day of October, 2009, I caused to be served a true and correct copy of Objection and Motion to Strike by the method indicated below, addressed to the following:

REBECCA A. RAINEY  
MOFFATT, THOMAS, BARRETT, ROCK  
& FIELDS, CHTD.  
P.O. BOX 829  
BOISE, ID 83701  
FAX: (208) 385-5384

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☒ FAX

  
Nancy J. Cunningham  
Paralegal to Robert Ward